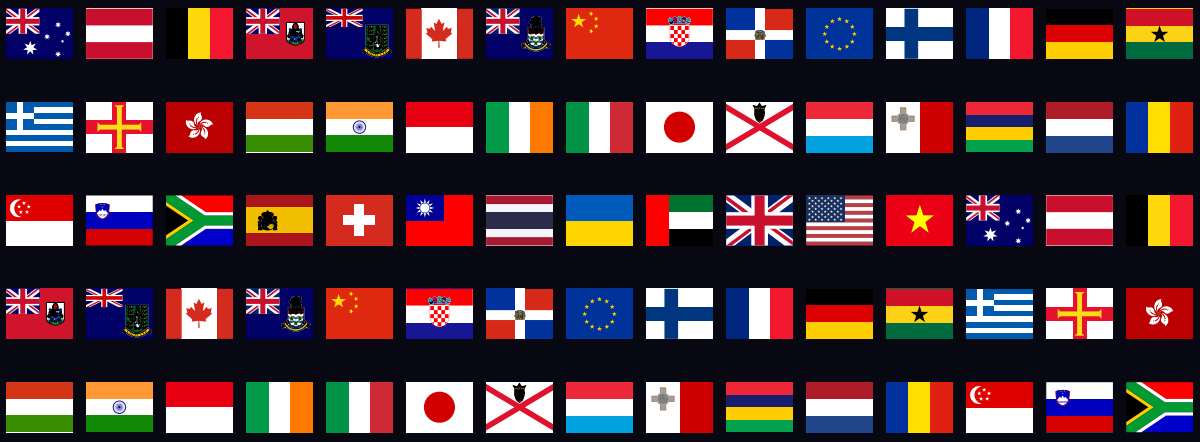
RESTRUCTURING & INSOLVENCY

Greece



LEXOLOGY
Getting The Deal Through

Consulting editor

Freshfields Bruckhaus Deringer LLP

Restructuring & Insolvency

Consulting editors

Catherine Balmond, Katharina Crinson

Freshfields Bruckhaus Deringer LLP

Quick reference guide enabling side-by-side comparison of local insights, including a general overview; types of liquidation and reorganisation processes; insolvency tests and filing requirements; directors' and officers' regime; stays of proceedings and moratoria; doing business during reorganisations; asset sales; creditor remedies, involvement and proving claims; security; clawback and related-party transactions; treatment of groups of companies; international cases; and recent trends.

Generated 15 November 2022

Table of contents

Contributors

Greece

Stathis Potamitis
stathis.potamitis@potamitisvekris.com
PotamitisVekris

POTAMITISVEKRIS

Konstantinos Rachianiotis
konstantinos.rachianiotis@potamitisvekris.com
PotamitisVekris

GENERAL

Legislation

What main legislation is applicable to insolvencies and reorganisations?

The Bankruptcy Code (in its former state, Law No. 3588/2007, as amended), has been abolished. Law No. 4738/2020, as amended by Law No. 4818/2021 (the new Law), is applicable to bankruptcies and pre-bankruptcy reorganisations in Greece. Law No. 4738/2020, as currently in force, abolished the reorganisation process after bankruptcy, given that it was a procedure that has been hardly applied in practice since its insertion in 2007. Moreover, Greece, by virtue of Law No. 3858/2010, adopted the UNCITRAL Model Law on Cross-Border Insolvency. Finally, because Greece is an EU member state, Regulation (EU) No. 2015/848 (Recast Insolvency Regulation) also applies.

Law stated - 30 June 2022

Excluded entities and excluded assets

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?

The new Insolvency Law inserted, for the first time, bankruptcy proceedings for consumers. Bankruptcy proceedings may be initiated by or against any natural person or any for-profit legal entity. Further, bankruptcy capacity may be granted to private law legal entities whose scope is not financial, but nevertheless exercise financial activities, by virtue of a presidential decree to be issued.

Public entities and local authorities cannot be declared bankrupt.

Regulated entities are governed as follows:

- insurance companies can be declared bankrupt but not before the conclusion of a special winding-up process as provided by Law No. 4364/2016 that adopted the provisions of Directive 2009/138/EC (Solvency II); any credit institution whose licence is revoked by the Bank of Greece is placed into special liquidation. Greece has adopted the provisions of BRRD I and BRRD II; and
- investment services companies can be declared bankrupt, although any bankruptcy proceedings may be suspended by virtue of article 90 of Law No. 4514/2018, if the Hellenic Capital Markets Committee revokes such a company's licence, thus leading to an initial stage of distribution of segregated client assets (special liquidation) and, thereafter, to liquidation or bankruptcy.

All assets of the debtor acquired before the declaration of bankruptcy are included in bankruptcy proceedings in which all creditors are entitled to participate. Exceptions are provided for individuals such as certain household goods (eg, clothing, food for up to three months, essential furniture, books and musical instruments, etc) and work tools. The debtor's primary residence may not be pursued by the debtor's creditors provided that certain conditions are met and the debtor is considered vulnerable. Also, as a general rule, individuals who are declared bankrupt must contribute their income in excess of the basic income provided by law to the estate until their discharge. The debtor's annual income may be excluded from the bankruptcy proceedings if the rest of the bankruptcy estate, including the debtor's primary residence or other fixed assets exceeds in value 10 per cent of the total liabilities, or both, and at the same time its minimum value, is not less than €100,000, excluding the assets acquired during the past 12 months before the filing of the bankruptcy petition.

Secured creditors may commence their enforcement proceedings upon the secured asset, within a time period of nine

months after the declaration of bankruptcy, thus seeking satisfaction from the proceeds of the secured asset's sale irrespective of the bankruptcy proceedings, unless the decision that declares bankruptcy provides for a going-concern sale. If the going-concern sale does not produce a sale within 18 months of bankruptcy, it converts into a piecemeal sale. In that case, the secured creditor may commence the enforcement proceedings within nine months of the completion of the going concern sale and the initiation of the piecemeal liquidation. Also, if the going concern sale has been achieved, the secured creditors have a nine-month period to exercise their individual rights upon the secured asset provided that the latter was not included in the going concern sale.

Law stated - 30 June 2022

Public enterprises

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 Law No. 4738/2020. Specific regulated sectors are subject to special rules.

Law stated - 30 June 2022

Protection for large financial institutions

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

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 No. 3864/2010 set up the Hellenic Financial Stability Fund as an independent agency funded by the state. The purpose of the fund is to maintain the stability of the Greek banking system through capital contributions to systemically important banks that have difficulty maintaining their minimum capital requirements. The same institution also provides funding to cover the funding gaps of credit institutions placed into special liquidation. In connection with this funding, Greece has adopted BRRD I and BRRD II (Law No. 4335/2015, as amended by Law No. 4799/2021), which include, among other things, bail-in requirements and other burden-sharing provisions.

Law stated - 30 June 2022

Courts and appeals

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?

As a general rule, the multi-member first instance court of the district in which the debtor has the centre of its main interests (COMI), or in case of a natural person-non merchant, the multi-member first instance court of the district in which the debtor has its primary residence has exclusive jurisdiction. However, for small-scale bankruptcies of either a consumer or a legal entity, the magistrates' court 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 not authorised to resolve any disputes that will arise during the bankruptcy proceedings, but only the disputes

restrictively described within Law No. 4738/2020, as currently in force. However, the bankruptcy 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 Law No. 4738/2020. However, the decisions of the bankruptcy court with regard to the appointment or replacement of the reporting judge and the bankruptcy administrator as well as the court decisions for the grant of an aid to the debtor or its family are excluded from the earlier-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 that 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. The decision that rejects the application for the ratification of the recovery agreement may be appealed.

In the case of a piecemeal sale, the determination of the first bid price is not subject to an appeal and appeal in cassation.

The new Law does not provide for any challenge by anyone who has a lawful interest against the different stages 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.

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 Law No. 4738/2020, as in force, no special permission must be given to the appellant. However, the appellant must pay a fee of €100 to €150, otherwise, the Court of Appeal will not examine the application.

Law stated - 30 June 2022

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

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

Any debtor that has ceased payments in a general and permanent way must file a bankruptcy petition within 30 days of 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. Law No. 4738/2020, as currently in force, establishes a rebuttable presumption by virtue of which a debtor is deemed to be in cessation of payments when it does not pay its due monetary obligations to the state, social security funds or financial or credit institutions provided that the following described conditions are also accumulatively met. The due monetary obligations must correspond at least to 40 per cent of the total due debts (or 60 per cent in case of a small-scale bankruptcy procedure, such as consumers or microenterprises); they must be in arrears for a period of at least six months and the non-payable obligation must exceed the amount of €30,000. Any debtor that is in imminent financial distress, in the sense that it foresees upcoming liquidity problems and potential default on its payments, amounting to a cessation of payments, may also file a bankruptcy petition.

In principle, once a debtor is declared bankrupt, a bankruptcy administrator will be appointed to manage the debtor's assets and affairs. Under Law No. 4738/2020 (the new Law), the debtor or the creditors, if they intervene during the

hearing, propose the appointment of an independent bankruptcy administrator of their choice. More specifically, a bankruptcy petition will include the nomination of a syndic as well as the acceptance of such appointment by the nominee (except for applications filed by the debtor that contain a statement that the placement of a syndic who accepts their appointment was not possible). The person nominated for that function must be a registered insolvency practitioner. At the petition hearing, other stakeholders may object to the nomination and nominate other practitioners. The court is expected to defer to the nomination made by the largest creditor but has the discretion to appoint another person if they are more suitable in its reasoned opinion.

In exceptional circumstances, a debtor may remain in control of its assets and affairs. The court, following a petition by the debtor and provided that the creditors' assembly consents may permit the debtor to remain in possession and administration of its assets, always only with the bankruptcy administrator's cooperation. The court, following a petition by the bankruptcy administrator and to the extent it is to the benefit of creditors, may remove the debtor from the management of its bankruptcy estate.

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 for a period of nine months after bankruptcy, unless the decision that declares bankruptcy provides for a going-concern sale, and the encumbered asset is part of the estate to be liquidated. If the going-concern sale does not produce a sale within 18 months of bankruptcy, it converts into a piecemeal sale. In that case, the secured creditors may commence the enforcement proceedings within nine months of the completion of the going concern sale and the initiation of the piecemeal liquidation. Also, if the going concern sale has been achieved, the secured creditors have a nine-month period to exercise their individual rights upon the secured asset or assets provided that the latter was not included in the going concern sale. Any enforcement proceedings attempted during the suspension are null and void. One of the important consequences of filing a petition on the basis of an imminent cessation of payments is that the court will set the date of cessation of payments as the date on which the bankruptcy petition was filed.

Law stated - 30 June 2022

Voluntary reorganisations

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

The main reorganisation proceeding of Law No. 4738/2020 is in force with regard to the restoration of a failed enterprise to financial health is the recovery procedure that precedes bankruptcy. There is also the extrajudicial debt settlement process, which, however, is quite technical and does not entail a cram-down effect towards all creditors of the debtor but binds only credit institutions, the state and social security funds. Thus, the latter will not be described in full detail.

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 (more than 50 per cent of the secured claims, and more than 50 per cent of the rest of the claims). Also, any debtor that is not in cessation of payments or 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 the implementation of the recovery procedure.

The agreement may consist of a pre-pack 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. If the court's decision is not issued within the four-month period, the court may grant (following a relevant petition of the debtor) a suspension on all individual and collective enforcement measures against the debtor or any other preventive measure. The total duration of the moratorium cannot exceed 12 months.

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 period of four months. Under certain circumstances, such moratorium may be further extended but the maximum duration cannot exceed six months.

There are four main criteria for the ratification of an agreement reached by the debtor and the qualified majority of creditors as set out earlier, namely:

- the recovery agreement must restore the viability of the debtor's business;
- it must not leave any non-consenting creditors (or those creditors whose consent is deemed to be given under certain conditions, ie, state and social security funds) in a less favourable financial position than they would be in the case of the debtor's bankruptcy (the 'no creditor worse off' principle);
- the recovery agreement is not a result of fraud and it does not violate any mandatory provisions of the law, such as competition law; and
- creditors of the same position are treated equally (however, the difference in treatment may be countenanced for important commercial or social reasons).

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

Finally, if the earlier-mentioned majority of creditors is not achieved, the statute provides the alternative of the recovery agreement ratification with the consent of creditors representing more than 60 per cent of the total claims against the debtor and more than 50 per cent of the secured claims, provided that certain conditions are met.

Extrajudicial debt settlement

Law No. 4738/2020, as in force, replaced Law No. 4469/2017 (Out-of-Court Workout) (OCW) and introduces a new electronic negotiation platform, which is entirely out of court and is limited only to the debtor, financial institutions, the tax authorities and social security funds. The new 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 a majority of claims held. If the proposal is based on an automated tool specified by a ministerial decision, then tax authorities and social security funds are required to apply the debt reduction or rescheduling provided by the automatic tool. In this way, the law provides for the participation of the state in an out-of-court restructuring as an inducement to a settlement offer by creditors that are financial institutions. The process leaves all other creditors unaffected. Participating 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.

Also, the state, social security funds or financial institutions, as creditors, may initiate the out-of-court debt settlement process by notifying the debtor setting a deadline for the submission of the application to 45 calendar days. Finally, from the submission of the application until the completion of the process in any way there is an automatic stay on all

enforcement measures against the debtor regarding the debts subject to the requested settlement (however, all preparatory actions for auctions as well as scheduled auctions within three months of the date of submission of the application remain unimpeded).

Law stated - 30 June 2022

Successful reorganisations

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?

The recovery agreement will be ratified by the bankruptcy court if it has the consent of the majority of creditors in each of the two classes formed in accordance with the new Law. These classes respectively include secured and all other creditors (including the state, social security funds and employees).

Under the new Law, the consent of the Greek state and social security funds to the recovery agreement may be deemed to be granted, even if they do not sign the agreement, under certain conditions (ie, the debt to each public law entity is less than €15 million, the 'no creditor worse off' principle is respected and the total debt owed to public law entities is less than the total debt owed to private creditors).

A recovery agreement will be judicially ratified if:

- it is signed by creditors representing more than 60 per cent of the secured claims and more than 50 per cent of the rest of the claims. Alternatively, if the earlier-mentioned majority of creditors is not achieved, the statute provides that 50 per cent of the secured creditors can cram down on the unsecured if they obtain the consent of 60 per cent of all creditors (in terms of the value of their claims), provided that certain conditions are met;
- it restores the viability of the debtor's business;
- it does not leave any non-consenting creditors (or those creditors whose consent is deemed to be given under certain conditions, ie, state and social security funds) in a less favourable financial position than they would be in the case of the debtor's bankruptcy (no creditor worse off principle);
- it is not a result of fraud and it does not violate any mandatory provisions of the law, such as competition law; and
- creditors of the same position are treated equally and any exceptions are justified by important business or social reasons.

If the creditor explicitly consents, then 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 recovery agreement.

Law stated - 30 June 2022

Involuntary liquidations

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. Creditors may not file a petition for the declaration of their debtor's bankruptcy on the grounds of an imminent financial

distress. Insofar as the effects of an involuntary liquidation are concerned, the process follows, as a general rule, the same steps as a voluntary liquidation. The sole exception is that in the case of large-scale bankruptcies of enterprises, the creditors may seek from the court to order the going concern sale of the bankruptcy estate or the liquidation of its separate operational business units provided that certain conditions are met.

More specifically, the bankruptcy petition may contain a request for the going-concern sale of the debtor's estate. If this is the case, the bankruptcy petition must be filed by a creditor who represents at least 30 per cent of the total claims against the debtor, in which case at least 20 per cent of the secured creditors' claims are included. The calculation of the percentage of the applicant creditor shall be based on a list of creditors drawn up by a certified class A or class B accountant or by an auditor.

Provided that the court orders the going concern sale or the separate sale of the operational business units, the bankruptcy administrator drafts an inventory of the bankruptcy estate. Similar to voluntary bankruptcies, liquidation begins immediately after the taking of the inventory. The going-concern sale does not have a minimum price.

Law stated - 30 June 2022

Involuntary reorganisations

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?

Creditors representing the same qualified majorities of claims against the debtor, as in the case of voluntary recovery proceedings, may file for ratification a recovery agreement, as long as the debtor is in cessation of payments. The intervention of the debtor during the court hearing against the recovery agreement does not affect its ratification provided that it is proved in the recovery application and in the expert's report that the recovery agreement shall not deteriorate the legal and financial position of the debtor compared to their position without the respective agreement in place.

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

Law stated - 30 June 2022

Expedited reorganisations

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

Yes. Both the repealed Greek Bankruptcy Code, as well as the new Law, provide 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.

Law stated - 30 June 2022

Unsuccessful reorganisations

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

The bankruptcy court will not ratify a recovery agreement if at least one of the following conditions occurs:

- the agreement is not signed by the qualified majorities of creditors;
- the agreement does not restore the viability of the debtor's business;
- the agreement violates the 'no creditor worse off' principle;
- the recovery agreement violates mandatory provisions of the law, such as competition law, or is the result of fraud; or
- creditors of the same position are not treated equally (exceptions apply for important business or social reasons).

The court's decision that rejects the recovery agreement is subject to an appeal.

The statute provides that the non-performance of the debtor in accordance with the recovery agreement may be set as a condition subsequent to the agreement or a termination right to each creditor. In any case, if the debtor defaults in relation to a specific obligation, the non-defaulting counterparty may exercise its individual rights under the law and the contract (ie, repudiation and termination) and the creditor's claims revert to their initial amount, as they were before the ratification of the recovery agreement, reduced by the amounts that they have already received.

Finally, if it is proved that the recovery agreement was a result of fraud or collusion between the debtor and a creditor or a third party, 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 before the ratification of the recovery agreement, reduced by the amount that they have already received. In rem securities and claims against co-debtors or guarantors, if lifted or written off respectively in accordance with the recovery agreement, revive.

Law stated - 30 June 2022

Corporate procedures

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

Greek laws provide procedures for the liquidation and dissolution of all forms of corporations. The general rule is that liquidation and 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 before the conclusion of a special winding-up process introduced by Law No. 4364/2016.

Law stated - 30 June 2022

Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Recovery proceedings are concluded upon judicial ratification of the agreement. Liquidation proceedings are concluded upon liquidation and distribution of all the debtor's assets. Also, insolvency will be terminated if the bankruptcy estate is inadequate to satisfy creditors' claims or five years have elapsed since the formal declaration of bankruptcy. Exceptionally, if there is a decision of the creditors' assembly, the court may extend the bankruptcy proceedings only once for up to two years.

Law stated - 30 June 2022

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency

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 the case of a 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 new Law introduced quantitative tests as rebuttable presumptions to facilitate court decisions and to provide greater visibility to all parties. A debtor will be presumed to be in cessation of payments if they are in arrears on claims of the state, the social security funds or the credit or the financial institutions representing more than 40 per cent (or 60 per cent in case of a small-scale bankruptcy procedure, such as consumers or microenterprises) of their total debts for a period of at least six months and provided that their non-performing liability exceeds €30,000.

The imminent financial distress (ie, the foreseeable liquidity problems and the potential default on the debtor's payments) amounting to a cessation of payments constitutes another ground for the declaration of bankruptcy when the petition is filed by the debtor. There is no precise definition of 'imminence' but, presumably, it has to be shown that it will happen in the immediate future.

Law stated - 30 June 2022

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

Companies are obliged to file for bankruptcy within 30 days of cessation of payments.

Law stated - 30 June 2022

DIRECTORS AND OFFICERS

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

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?

According to article 127 of Law No. 4738/2020, if the application for the declaration of insolvency is not filed promptly (ie, within 30 days of the company's cessation of payments), directors who are responsible for such delay are personally liable to indemnify creditors for the damage:

- that they will incur from the decrease of their recovery due to such delay; and
- due to their contracting with the debtor during the latter's insolvency (ie, during the period between the 31st day following the debtor's cessation of payments and the day after the filing of the insolvency petition).

Any person who induced the directors to breach their obligation for a prompt filing is also liable.

Law No. 4738/2020 also provides that delays because of an attempt to conclude a rehabilitation agreement or an out-of-court workout (OCW) settlement are excused.

Claims against management for liability arising from a delay in filing for bankruptcy are asserted by the bankruptcy administrator. The period of limitations for such liability is three years from its emergence. If, however, the delay or the cessation of payments is intentional or fraudulent, the prescription period is 10 years.

Law stated - 30 June 2022

Directors' liability – other sources of liability

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 value added tax 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).

Further, if the cessation of payments was the result of a wilful misconduct (fraudulent act) or gross negligence of the directors, the latter are personally liable for the indemnification of any damage suffered by the creditors. Any person who induced the directors to proceed with actions or omissions that resulted in insolvency is also liable. Directors' liability in the above instances is joint and several.

Also, Law No. 4738/2020 provides for criminal liability of the legal representatives of a company for a number of actions, including fraudulent bankruptcy, hiding assets, onerous transactions, disposal of merchandise at an undervalue, preferential treatment of creditors or when they receive higher advance payments than those provided in company's articles of association or the decision of the competent body.

Finally, article 195 of Law No. 4738/2020 provides for the discharge of any liability of individuals who are ex lege personally and jointly liable (ie, legal representatives of the company for unpaid tax liabilities and social security contributions) regarding liabilities of the company (debtor) borne during the suspect period (ie, from the cessation of payments until the declaration of bankruptcy) or 36 months, or both, before the suspect period, after 36 months from the submission of the bankruptcy application or 24 months from the declaration of bankruptcy (whichever is earlier), unless a challenge by a third party is submitted. In the case of the submission of a challenge, discharge is granted if the relevant individuals have demonstrated good faith, were cooperative, and are not responsible for the non-timely submission of the bankruptcy application or the cessation of payments (malice or gross negligence).

Law stated - 30 June 2022

Directors' liability – defences

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 of 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. However, Law No. 4738/2020 provides that delays due to an attempt to conclude a rehabilitation agreement or an OCW settlement are excused.

Law stated - 30 June 2022

Shift in directors' duties

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 127 of Law No. 4738/2020, 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.

Law stated - 30 June 2022

Directors' powers after proceedings commence

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

Bankruptcy proceedings

The right to manage and transfer the debtor's assets passes to the bankruptcy administrator 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 bankruptcy administrator 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 provided that the creditors' assembly consents – may permit the debtor to remain in possession and administration of its assets, always with the bankruptcy administrator's cooperation, and subject to being recalled if that is held to serve the creditors' interests.

Recovery proceedings

The debtor remains in possession during the pendency of an application for the ratification of a recovery agreement; however, upon the application of an interested party, the court can appoint a special agent to carry out some or all of the functions and responsibilities of management.

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.

Law stated - 30 June 2022

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

Stays of proceedings and moratoria

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

Recovery proceedings

Before the filing of a recovery agreement for ratification, the debtor (with the support of at least 20 per cent of the creditors in terms of the value of their claims and upon a showing that the protection is necessary as a matter of urgency) can ask for a stay of enforcement actions. Such a stay may be provided for up to four months and can be further extended to a maximum total duration of six months.

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 in relation to claims that will arise until the issuance of the court decision. Such automatic moratorium is granted to the debtor only once. The moratorium regarding enforcement actions automatically prevents the transfer of the debtor's immovable property and equipment (exceptions apply).

If 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 it deems necessary. The total duration of the moratorium cannot exceed 12 months. However, 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 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.

Liquidation or bankruptcy 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 for a period of nine months, after the lapse of which the stay is extended to their rights and remedies as well. If the decision that declares bankruptcy provides for a going-concern sale, and the encumbered asset is part of the estate that is going to be liquidated, the stay is imposed on secured creditors as well. If the going concern sale or the sale of the separate operational business units is completed in accordance with the provisions of law, the suspension of the secured creditors' individual enforcement rights is lifted. The lifting of the stay may not exceed a period of nine months, starting from the completion of the process. If the going-concern sale does not produce a sale within 18 months of bankruptcy, it converts into a piecemeal sale. In that case, the secured creditors may commence the individual enforcement measures within nine months of the completion of the going concern sale and the initiation of the piecemeal liquidation. In the case of foreclosure made by a secured creditor, the lifting of the suspension is valid until the sale of the secured asset through auction.

Law stated - 30 June 2022

Doing business

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 proceedings

No conditions or restrictions are set by law on the debtor's conduct of business. The debtor remains in possession during the pendency of an application for the ratification of a recovery agreement; however, upon the application of an interested party, the court can appoint a special agent to carry out some or all of the functions and responsibilities of management.

No conditions apply to creditors who supply goods or services. 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. 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 up to six months before the submission of the recovery agreement to the Bankruptcy Court.

Finally, the statute provides for the satisfaction in full of the above super-seniority claims arising from the 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.

Liquidation as a going concern or liquidation of separate operational business units

The bankruptcy 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 bankruptcy creditors given that is considered as a 'post-commencement claim'.

Law stated - 30 June 2022

Post-filing credit

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?

Creditors that provide loans or credit for the continuation of the business activities, in the case of a going-concern sale or the case of a liquidation of separate business units, enjoy priority in common with other claims that arose after the declaration of bankruptcy by the action of the bankruptcy administrator 'post-commencement claims'. The bankruptcy administrator when drafts a distribution table deducts the post-commencement claims along with the bankruptcy expenses and their remuneration.

In recovery proceedings, the debtor is free to borrow money during the pendency of an application for ratification of a recovery agreement. Interim and new financing can be provided to a debtor in a recovery proceeding for the purpose of preserving its viability or keeping it as a going concern. Creditors that, pursuant to the recovery agreement, provide loans or credit to the debtor for the continuation of its business activities, are ranked as first-class general preferential 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. In this case, the loans or credit must be provided up to six months before

the submission of the recovery agreement.

The statute provides for the satisfaction in full of the earlier-mentioned 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.

However, Law No. 4512/2018 introduced a parallel ranking system for claims that arise at any time after 17 January 2018 and that are secured with a pledge or a pre-notation or mortgage over any movable or immovable property registered at any time after 17 January 2018 on an asset that was free of any encumbrances on said date. In this case, post-filing claims do not enjoy a 'super seniority' status over the specific encumbered asset, but they are ranked as first-class general preferential claims.

Law stated - 30 June 2022

Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

Until the taking of the inventory, any sale of assets is forbidden without prior permission by the reporting judge granted under exceptional circumstances (eg, where the assets that are subject to immediate wear or depletion may be liquidated before the taking of the inventory at the bankruptcy administrator's request and provided that the reporting judge consents). Liquidation is performed through a public auction. The purchaser acquires the assets 'free and clear' of claims. The going concern sale does not have a minimum price whereas in the case of a piecemeal liquidation the invitation for the auction that is published by the bankruptcy administrator contains the reserve price of the assets under liquidation.

With respect to the 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.

In the case of a pre-pack sale of the debtor's business through the recovery agreement, the purchaser acquires the business (and assets) of the debtor 'free and clear' of claims, except for those liabilities explicitly transferred to them in accordance with the recovery agreement (ie, the 'transfer of business liability' is not applicable in the case of pre-pack sales).

Law stated - 30 June 2022

Negotiating sale of assets

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. However, in the case of piecemeal liquidation, after three unsuccessful auctions, there is a four-month period for a bilateral sale. Credit bidding is not allowed in bankruptcy proceedings.

Law stated - 30 June 2022

Rejection and disclaimer of contracts

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?

Bankruptcy proceedings

After the declaration of bankruptcy, only the bankruptcy administrator may decide about the rejection of an unfavourable contract or the continuation of another one. Specifically, in the case of a piecemeal liquidation, the declaration of bankruptcy entails the automatic and without any penalty termination of all pending contracts of continuous nature within 60 days, unless the bankruptcy administrator declares in writing to the counterparty that opts for either the immediate termination or the continuation of the agreement.

On the other hand, in the case of the liquidation of the debtor's business as a going concern, the declaration of the debtor's bankruptcy does not entail the automatic termination of the earlier-mentioned agreements. The bankruptcy administrator may, in writing, opt for either the continuation or termination of the agreement. Also, within 30 days of the declaration of bankruptcy, the debtor's counterparty can request from the bankruptcy administrator to decide within a reasonable deadline (that may not exceed 30 days) whether they are for the performance of the contract. If the bankruptcy administrator does not reply within the deadline set by the counterparty, then the counterparty is entitled to repudiate the contract and claim for damages. Said claims are satisfied in full and ahead of all other creditors' claims.

However, in the event of a party's bankruptcy the termination right, if it is explicitly provided in the agreement, is not affected and may be lawfully exercised by the counterparty. If a default event occurs after the declaration of bankruptcy, the contract may be terminated regardless of the debtor's bankruptcy.

Recovery proceedings

Without prejudice to Law No. 3301/2004 (financial collateral arrangements), the filing of a recovery or preventive measures application, the ratification of the recovery agreement does not constitute a ground for cancellation, termination or amendment of pending contracts in a way that may harm the debtor, in accordance with relevant contractual provisions. Also, during the moratorium on enforcement measures, the court may prohibit the termination of contracts that are considered material for the continuation of the business until the issuance of a decision on the recovery application.

Law stated - 30 June 2022

Intellectual property assets

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 intellectual property rights and the rules generally applicable to the performance of contracts apply.

Law stated - 30 June 2022

Personal data

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 Law No. 4738/2020 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 the case of transfer of any business as per the provisions of a ratified recovery agreement, is subject to the provisions of Regulation (EU) No. 2016/679 (General Data Protection Regulation) (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 must 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. Nevertheless, 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 and 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 before 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.

Law stated - 30 June 2022

Arbitration processes

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.

Law stated - 30 June 2022

CREDITOR REMEDIES

Creditors' enforcement

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

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 No. 4336/2015.

Law stated - 30 June 2022

Unsecured credit

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 before and until obtaining an executory title can apply for an interim order for a prenotation of a 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.

Law stated - 30 June 2022

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

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 Electronic Solvency Registry, and if there is a relevant provision, to the General Commercial Registry as well. All creditors (except for the Greek state) announce their claims within a time period of three months after the publication of the decision that declared the debtor's bankruptcy in the Electronic Solvency Registry.

The most significant creditors' assemblies are:

- the creditors' assembly that decides on whether to accept bids on going-concern sales. The assembly may accept the going concern sale under the condition of an improved bid, as decided by the assembly; and
- the creditors' meeting that decides upon the conduction of a new auction after the unsuccessful sale of the business on a going-concern basis (for all or parts of the business). The new auction must take place within 18 months of bankruptcy being declared.

Every six months, the bankruptcy administrator submits a report to the reporting judge on the continuation of the bankruptcy proceedings and the expenses that have been made. After the conclusion of the bankruptcy proceedings, the bankruptcy administrator submits a report to the creditors' assembly on their accounting.

Law stated - 30 June 2022

Creditor representation

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

Law No. 4738/2020, as currently in force, provides that the creditors are represented in the creditors' assembly. The most significant creditors' assembly is the one that decides on whether to accept bids on going-concern sales or on the conduction of a new auction following an unsuccessful one. Until the taking of the stage of verification of creditors' claims, the assembly is comprised of all creditors whose claims are contained within the creditors' list that is attached to the decision declaring bankruptcy. After the verification stage, the creditors whose claims have been accepted or have been temporarily been accepted participate in the assembly. The creditors' assembly is not precluded to retain advisers but if it does so, it is at its own expenses. In other words, the advisor's agreed remuneration does not constitute bankruptcy expenses.

Law stated - 30 June 2022

Enforcement of estate's rights

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. Law No. 4738/2020, as in force, does not permit the bankruptcy creditor to pursue its claims if the bankruptcy administrator has no assets to pursue a claim. Law No. 4738/2020 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.

Law stated - 30 June 2022

Claims

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 administrator invites all creditors that are included within the list provided by the debtor to announce their claims within three months of the public notification of the decision that declared bankruptcy. The announcement is made in the Electronic Solvency Registry. There is no time limit for the announcement of the claims of the Greek state, which must be announced no later than the drafting of the last distribution table. All other 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 that must be filed within six months of the expiration of the above-mentioned deadline for the announcement of the creditors' claims.

The bankruptcy administrator must verify the creditors' claims, which were announced, within three months of the expiration of the deadline for the announcement of creditors' claims. The claims of the state are excluded from the verification stage, and the Greek state participates only in distributions that take place after its announcement. At this stage, it is unlikely that a creditor's claim may be challenged. The statute provides that objections to verification of claims can be raised together with all other relevant objections at the time of the distribution of the proceeds of liquidation.

Law No. 4738/2020, as amended, 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.

Law No. 4738/2020, as amended, 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.

Law stated - 30 June 2022

Set-off and netting

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 the debtor's claims provided that their claims became due and payable before the debtor's bankruptcy.

In recovery proceedings, during the automatic moratorium on enforcement measures the creditors' right to set off claims that arose before the filing the recovery application is forbidden. In addition, there are special protective provisions in Greek law for set-off under financial collateral and netting of position in listed derivatives (eg, they are not affected by a stay).

Law stated - 30 June 2022

Modifying creditors' rights

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?

Law No. 4738/2020, as in force, 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.

Law stated - 30 June 2022

Priority claims

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

The major privileged claims ranked in order of seniority; namely, super seniority claims (article 167): loans or credit provided pursuant to a recovery agreement, goods or services that are provided on the basis of a recovery agreement; and 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 the latter case, loans or credit, goods or services must be provided up to six months before the submission of the recovery agreement.

The following creditors' claims (other general preferential creditors) rank as follows:

- unpaid employee remuneration incurred in the two years before bankruptcy being declared and employment termination compensation, regardless of when it occurred; lawyers' fees that date up to two years before the declaration of bankruptcy, and claims for compensation of salaried lawyers owing to the 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.

If there are no claims ranked under general privilege, then 90 per cent of the proceeds are applied towards the claims ranked under special privilege or secured claims and 10 per cent towards unsecured claims.

If there are no claims ranked under special privilege or secured claims, then 70 per cent of the proceeds are applied towards the claims ranked under general privilege and 30 per cent towards unsecured claims.

If there are no unsecured claims, one-third of the proceeds are applied towards the claims ranked under general privilege and two-thirds towards claims ranked under special privilege or secured claims.

Law No. 4512/2018 introduced a parallel to the above ranking system for claims that arise at any time after 17 January 2018 and that (claims) are secured by a pledge or a prenotation or mortgage registered at any time after 17 January 2018 on an asset that was free of any encumbrances on the said date. If these conditions are cumulatively met, then (after deducting the legal expenses, bankruptcy expenses including the bankruptcy administrators' remuneration) the following ranking is applicable:

- rank one: employees' claims arisen up to six months before the first date of the auction 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 over 25 years old multiplied by 275 per cent;
- rank two: special privileged claims of paragraphs 1 and 2, article 976 of the Greek Code of Civil Procedure (ie, secured by prenotation or mortgage or pledge claims and claims arisen from expenses for the maintenance of the auctioned property);
- rank three: general privileged claims and special privileged claims of paragraph 3, article 976 of the Greek Code of Civil Procedure (general privileged claims; mainly, employees (the balance of the above claims), Greek state, social insurance funds etc); and
- rank four: unsecured or non-privileged claims.

Each rank must be fully satisfied before the satisfaction of the following or next rank (ie, rank one is fully satisfied before rank two, etc).

Law stated - 30 June 2022

Employment-related liabilities

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 their compensation that must be announced before the bankruptcy administrator.

With regard to recovery proceedings, Law No. 4738/2020 provides that the recovery agreement cannot affect:

- the right of collective negotiations and employees' protest or strikes;
- the right to informing and consulting with employees in accordance with Directive 2002/14/EC (Information and Consultation of Employees) and Directive 2009/38/EC (European Works Council); and
- the rights protected under Directive 98/59/EC (Collective Redundancies), Directive 2001/23/EC (Transfer of Businesses) and Directive 2008/94/EC (Insolvency Protection).

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.

Law stated - 30 June 2022

Pension claims

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 before 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 the statute. Law No. 4738/2020 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.

Law stated - 30 June 2022

Environmental problems and liabilities

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 the action of the bankruptcy administrator, the person suffering the damage may file a lawsuit against the bankruptcy administrator, under their capacity as administrator of the insolvency estate, and upon acquisition of an enforceable title, they 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 they intentionally failed to diagnose that the estate is not likely to be able to satisfy such 'post-commencement' debt.

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 the damaging act. The claim against the bankruptcy administrator is time-barred after a period of three years from the completion of their assigned duties.

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, they may be satisfied by the debtor's estate. It should be noted that 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.

Law stated - 30 June 2022

Liabilities that survive insolvency or reorganisation proceedings

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 the debtor's assets and for the discharge or conversion of other liabilities. Otherwise, liabilities continue to lie with the debtor. Natural persons, whether involved in a business activity or not, are discharged of their debts after three years as of the declaration of bankruptcy. Natural persons that are joint and severable liable with the legal entity for the tax and social security obligations are discharged from debts that arose within the suspect period of from debts accrued 36 months before the suspect period. The discharge of said persons takes place either after the lapse of three years as of the submission of a bankruptcy petition or after the lapse of two years as of the declaration of bankruptcy (whichever comes earlier), unless a challenge by a third party is submitted.

Creditors can prevent discharge if they show abusive conduct, failure to cooperate or deception. Also, 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.

Law stated - 30 June 2022

Distributions

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

Following the 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 published at the Electronic Solvency Registry.

Law stated - 30 June 2022

SECURITY

Secured lending and credit (immovables)

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. To create a mortgage, a creditor must hold a title provided by law, a final court decision or a notarial deed. A mortgage is perfected by its registration in the competent Land Registry or Cadastre.
- Prenotation mortgage: this is the most common form of security on real estate property and is created by a court order in the nature of an injunction and is perfected by its registration in the competent Land Registry or Cadastre. It can be viewed as a conditional mortgage that can be converted into a full mortgage upon the debtor's default and the award of the creditor's claim by an unappealable judgment or payment order with retroactive effect as of the issuance of the prenotation order.

Prenotation mortgages are far more common than mortgages because court fees are significantly lower than the

notarial fees that would be payable for the mortgage deed.

Law stated - 30 June 2022

Secured lending and credit (movables)

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 the physical delivery of the movable asset to the pledgee.
- Chattel mortgage (articles 1 and 3 of Law No. 2844/00) (also a 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 No. 2844/00): a floating charge enables the debtor to deal with (and dispose of) the charged assets (as specified in the agreement) in the ordinary course of business until the occurrence of either a default or an agreed event that causes the floating charge to crystallise. Following crystallisation, a floating charge becomes a fixed charge (similar to a pledge) attaching to whatever 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 them, 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 the 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 their claim through the proceeds of the auction.

Law stated - 30 June 2022

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

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 Law No. 4738/2020, as amended, are presumed to prejudice creditors' interests and are mandatorily 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 or in a manner that was different from that under the

corresponding agreement (except for debt to asset swaps between the debtor and a credit institution); and
- the grant of a new security for existing indebtedness (or its refinancing).

The above transactions are also annulled provided that they took place up to six months before the suspect period and until the declaration of bankruptcy.

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 past five years before 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.

Nevertheless, certain transactions are not subject to annulment, namely:

- those in the ordinary course of business;
- those that are exempted by law from clawback include:
  - any mortgage or loan granted by a company under the Law of 17 January 1923 and Law No. 4001/1959 to secure a loan;
  - any pledge or mortgage granted to secure claims from bond loans issued according to Law No. 3156/2003;
  - the transfer of claims pursuant to Law No. 3156/2003 regarding the securitisation of claims; and
  - the provision of financial collateral under such agreement, pursuant to Law No. 3301/2004;
- those in which the debtor received adequate consideration in cash;
- those that are anticipated, or carried out, in the implementation of an out-of-court workout or court-ratified recovery agreement; or
- those that were reasonable and directly needed to secure a recovery agreement, such as the payment of advisor fees for the negotiation, approval or ratification of such an agreement.

Law stated - 30 June 2022

Equitable subordination

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

Law No. 4738/2020, as amended, provides a set of rules for the annulment of transactions contemplated during the period from the cessation of payments to bankruptcy declaration, and also damage to creditors. Law No. 4738/2020, as amended, 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. Objections to verification of claims can be raised by any creditor together with all other relevant objections at the time of the distribution of the proceeds of liquidation, in which case the Bankruptcy Court will have the final decision. Finally, Law No. 4738/2020, as in force 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.

Law stated - 30 June 2022

Lender liability

Are there any circumstances where lenders could be held liable for the insolvency of a debtor?

There is no such provision under Law No. 4738/2020.

Law stated - 30 June 2022

GROUPS OF COMPANIES

Groups of companies

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

As a general rule, the parent company is not liable for the corporate debts incurred by any of its affiliates or vice versa. This is in accordance with the principle of the 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 the 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, if 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.

Law No. 4738/2020 does not provide for substantive consolidation in the 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.

Law stated - 30 June 2022

Combining parent and subsidiary proceedings

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?

Law No. 4738/2020 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 the 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 the separate corporate personality of each company member of a group. However, the provisions of Regulation (EU) No. 2015/848 (Recast Insolvency Regulation) regarding group coordination proceedings and the appointment of a group coordinator may be applicable.

Law stated - 30 June 2022

INTERNATIONAL CASES

Recognition of foreign judgments

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?

Regulation (EU) No. 2015/848 (Recast Insolvency Regulation) on insolvency proceedings (replacing Regulation (EC) No. 1346/2000 (Insolvency Regulation)), 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.

Law stated - 30 June 2022

UNCITRAL Model Law

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

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 (the Model Law). 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). Also, 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.

Law stated - 30 June 2022

Foreign creditors

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.

Law stated - 30 June 2022

Cross-border transfers of assets under administration

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

The EU Recast Insolvency Regulation 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.

Law stated - 30 June 2022

COMI

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?

Law No. 4738/2020 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. Law No. 4738/2020 establishes a rebuttable presumption in the 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.

Law No. 4738/2020 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.

Law stated - 30 June 2022

Cross-border cooperation

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 No. 3858/2010, which implemented most of the 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 Insolvency Regulation.

Law stated - 30 June 2022

Cross-border insolvency protocols and joint court hearings

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

Greek courts have not concluded any cross-border insolvency protocol or other arrangement that regulates coordination if concurrent insolvency proceedings are opened in different jurisdictions. However, Law No. 3858/2010,

which implemented most of the 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.

Law stated - 30 June 2022

Winding-up of foreign companies

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, Law No. 4738/2020 uses the same criterion as the 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. Law No. 4738/2020 establishes a rebuttable presumption in the 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.

Law stated - 30 June 2022

UPDATE AND TRENDS

Trends and reforms

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 (Preventative Restructuring) and overhaul both the out-of-court workout framework, establish insolvency proceedings for consumers and streamline the bankruptcy process. The Hellenic Parliament adopted on 26 October 2020, a new integrated insolvency framework (Law No. 4738/2020 (Law for the Settlement of Debts and Provision of a Second Chance)) that covers preventive tools in out-of-court restructuring tools and liquidation proceedings. As of 1 March 2021, Law No. 4738/2020, as amended by Law 4818/2020, (the new Law) replaced Law No. 3588/2007 (the Greek Bankruptcy Code). However, the new out-of-court workout (OCW) and bankruptcy of consumers have been set in force as of 1 June 2021.

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 Preventative Restructuring Directive ahead of all other EU member states. As such, the new Law should also help Greece better participate in the EU banking and markets union.

The new Insolvency Law'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 Law 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 new Law'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 new Law:

- 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 reporting judge, who can issue orders without a formal hearing. Also, 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 previous system, it followed the verification of claims and related disputes);
- there is an automatic adjustment of the reserve price within 20 business days if an auction fails to raise a bid. After three unsuccessful efforts, there is a four-month period for a bilateral sale, and if that fails then a sale to the highest bidder without a minimum bid level ensues;
- the decision for the declaration of bankruptcy determines whether the liquidation will be on a piecemeal basis or a going-concern basis; under the previous regime, both were 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 (eg, 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 (eg, 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 applicable under the previous Bankruptcy Code));
- 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 (eg, a consumer will be presumed to be in cessation of payments if they are in arrears on bank loans, taxes or social security contributions representing more than 60 per cent of their total due debts for a period of at least six months, provided that the unpaid portion is more than €30,000).

Reliance on electronic platforms and automated solutions

There is an increased reliance on electronic platforms and automated solutions, 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 Law 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 the 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 Preventative Restructuring Directive. 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, the difference in treatment may be countenanced for important commercial or social reasons). Certain employees' rights (eg, the right of collective negotiations, strikes, TUPE, etc) are unaffected by a recovery agreement and their claims are not subject to a stay (unless otherwise decided by the court).

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 (in some cases after one year). 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 its remuneration;
- decisions on going-concern sales; 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 to 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 and delivery of auction programme) are unimpeded. The maximum duration of the OCW process is two months (in certain exceptional cases, this 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 (eg, the announcement of claims and creditor votes are platform-based); and
- the electronic register provides maximum publicity, advance warning and transparency to all proceedings under the new Law.

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.

Combination with social measures to address disproportionate effects

The introduction of the Insolvency Law is to be followed by the introduction of a primary residence preservation scheme for vulnerable individuals, as well as loan subsidies and rental subsidies. The tendering process for the selection of the private entity to be entrusted with this task (the Scheme Entity) has commenced and the scheme should come into operation within 2023. However, social measures neither interfere with individual or collective enforcement nor limit the degree or speed of creditor recovery. The mechanism involves the purchase of the primary residence of an applicant who is characterised as vulnerable and is either declared bankrupt or is having its primary residence auctioned off by the Scheme Entity. That entity acquires the residence at a market price without imposing any delays on the proceedings, thereby also providing the estate (and therefore also its creditors) with reasonable recovery and liquidity. The Scheme Entity is then required to lease back the primary residence to the vulnerable debtor for a period of 12 years and also provide them with a buy-back option at a then-current market value. The availability to vulnerable debtors of a mortgage payment subsidy in the OCW process may further facilitate debtor-creditor deals.

Law stated - 30 June 2022

Jurisdictions

Australia	Gilbert + Tobin
Austria	Freshfields Bruckhaus Deringer
Belgium	Freshfields Bruckhaus Deringer
Bermuda	Carey Olsen
British Virgin Islands	Carey Olsen
Canada	Thornton Grout Finnigan
Cayman Islands	Carey Olsen
China	Dentons
Croatia	Schoenherr
Dominican Republic	Guzmán Ariza
European Union	Freshfields Bruckhaus Deringer
Finland	Waselius & Wist
France	Freshfields Bruckhaus Deringer
Germany	Freshfields Bruckhaus Deringer
Ghana	B&P Associates
Greece	PotamitisVekris
Guernsey	Carey Olsen
Hong Kong	Freshfields Bruckhaus Deringer
Hungary	Nagy és Trócsányi
India	Chandhiok & Mahajan, Advocates and Solicitors
Indonesia	Oentoeng Suria & Partners
Ireland	Dillon Eustace LLP
Italy	Freshfields Bruckhaus Deringer
Japan	Anderson Mōri & Tomotsune
Jersey	Carey Olsen

Malta	Ganado Advocates
Mauritius	Benoit Chambers
Netherlands	Freshfields Bruckhaus Deringer
Romania	CITR SPRL
Singapore	Ashurst
Slovenia	Jadek & Pensa
South Africa	Fasken
Spain	Freshfields Bruckhaus Deringer
Switzerland	Walder Wyss Ltd
Taiwan	Lee and Li Attorneys at Law
Thailand	Weerawong, Chinnavat & Partners Ltd
Ukraine	Vasil Kisil & Partners
United Arab Emirates	Freshfields Bruckhaus Deringer
United Kingdom - England & Wales	Freshfields Bruckhaus Deringer
USA	Paul, Weiss, Rifkind, Wharton & Garrison LLP
Vietnam	Freshfields Bruckhaus Deringer