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Greece

Katerina Christodoulou
Your Legal Partners

1. Legislation

What legislation is applicable to bankruptcies and reorganisations?

The new Bankruptcy Code enacted by Law 3588/2007 (The Bankruptcy Code) governs all bankruptcy and restructuring procedures in Greece.

2. Excluded entities

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

Insolvency procedures can be commenced against merchants (individuals who carry out a trade as a profession) and legal entities that pursue a financial objective. The public sector entities, local authorities and public organisations are exempted from bankruptcy. In addition, banks and insurance companies are not subject to bankruptcy, once submitted to liquidation pursuant to special laws.

3. Secured lending and credit (immoveables)

What are the principal types of security devices that are taken on immoveable (real) property?

The principal types of security taken on immovables (real) property are the following:

Mortgage

A mortgage can be established by a notarial deed (or by a judicial decision, or by the law in special cases). The establishment of a mortgage by notarial deed is quite costly and it is therefore not preferred among banks and borrowers.

Prenotation of mortgage

Instead, in most cases, banks obtain a prenotation of a mortgage, which is an injunction over the property entitling its beneficiary to obtain a mortgage as soon as a final judgment for the secured claim has been obtained, but which is valid as of the date of the prenotation.

4. Secured lending and credit (moveables)

What are the principal types of security devices that are taken on moveable (personal) property?

The principal types of security that are available for moveable property are the following:

Pledge on chattels

It is available subject to delivery of possession of the pledged asset to the creditor. Pledge can also be registered in special books without delivery to the creditor.

Retention of title

According to article 532 of Creek Civil Code, the seller of the moveable property may retain ownership over the sold assets until the purchase price has been paid.

Fiduciary transfer of assets

It is an arrangement, which although not provided by law is recognised by the courts, pursuant to which 'revocable' ownership over a moveable asset is transferred to the creditor of a claim, while possession is kept by the debtor, to the effect that if the debt is not paid, the creditor becomes full owner.

5. Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

An unsecured creditor must first obtain a final court judgement in respect with its debt. Pre-judgement attachments are not available. Instead, a decision can be declared temporarily enforceable without being final (ie, endorsed by a court of appeal), if the court decides so, or in limited cases provided by law.

A judgment obtained by a foreign creditor will be recognised in Greece without being reviewed as to the merits subject to certain requirements as provided in article 323 of the Greek Code of Civil Procedure.

6. Courts

What courts are involved in the bankruptcy process? Are there restrictions on the matters that the courts may deal with?

The multimember First Instance Court of the district, where the debtor has the centre of its business activities, has competence over all cases that derive from the bankruptcy or on the occasion thereof or to which bankruptcy has an impact.

7. Voluntary liquidations

What are the requirements for a debtor to commence a voluntary liquidation of its business? What are the effects of the commencement of the liquidation?

Generally speaking, voluntary liquidation can be effected as regards legal entities under general corporate procedures, to the extent that such entity is able to settle its debts.

Under the Bankruptcy Code a merchant is entitled to file an application for declaration into bankruptcy in case of 'imminent failure'. As such is recognised the probable inability of the merchant to pay its current and future debts at the time they will fall due in spite of expected collections. Only the debtor and not the creditors can initi-

ate proceedings due to imminent failure. Bankruptcy proceedings may lead to the liquidation of the bankruptcy estate.

Declaration of bankruptcy gives rise to the following consequences:

As regards the debtor: the debtor is deprived of the power to dispose of and manage its bankruptcy assets and any such management or disposal is subject to the consent of the receiver. The bankruptcy property is separated from the post-bankruptcy property.

As regards the creditors: these are prohibited from commencing or continuing enforcement procedures against the bankrupt debtor. However, for secured creditors exceptions apply (see question 15). Furthermore, in relation to claims of non-secured creditors upon bankruptcy no legal or contractual interest is further accrued.

In general, existing agreements prior to the declaration of bankruptcy remain in force (see question 31).

8. Involuntary liquidations

What are the requirements for creditors to place a debtor in involuntary liquidation? What are the effects of the commencement of the liquidation?

A borrower who fulfils the requirements for bankruptcy (see question 2) should mandatorily file a petition for declaration into bankruptcy, if it is unable in a permanent and generic way to meet its monetary debts that have fallen due and payable. A petition may be filed to the court by any creditor having a legitimate interest by the competent district attorney. In the bankruptcy proceedings, and so far as no reorganisation takes place, the receiver, may pursue the liquidation of the bankruptcy estate either by sale of the business as ongoing concern or liquidation of the estate in parts. The consequences of the involuntary liquidation are the same with the consequences of the voluntary liquidation (see question 7).

9. Voluntary reorganisations

What are the requirements for a debtor to commence a financial reorganisation? What are the effects of the commencement of the reorganisation?

The Bankruptcy Code has abolished the previous dual bankruptcy system (ie, liquidation of the bankruptcy property and restructuring) and introduces a uniform declaration into bankruptcy procedure that may result either to liquidation or restructuring. Restructuring is provided both in pre-bankruptcy and post-bankruptcy stage.

Conciliation agreement

At pre-bankruptcy stage a conciliation procedure is provided in case of financial weakness of the debtor, present or predictable without cease of payments having yet occurred. The debtor who fulfils the bankruptcy eligibility criteria (see question 2) may file a petition for the initiation of the conciliation proceeding by the bankruptcy court. Upon the approval of the conciliation agreement by the court, the initiation of any individual enforcement measures, the adoption of injunction relief as well as any time-bar of the creditor's claims is suspended for the term of the conciliation agreement. The adoption of any collective insolvency procedures, included bankruptcy, are suspended for six months. The above suspension applies also to the creditors who have not signed the conciliation agreement. However, the conciliation agreement does not bind them and their claims remain intact.

Reorganisation plan

The debtor and its creditors can arrange a restructuring plan that could aim either to the transfer or the lease of the business as an ongoing concern or the corporate restructuring. The reorganisation plan may be submitted by the debtor (together with the petition for declaration into bankruptcy or later within four months) or by the receiver. The plan should not provide the limitation of the creditors' claims more than 20 per cent payable in whole or in part within one year. If the creditors accept the plan with a majority prescribed by law, it is up to the court to confirm or reject the plan. If a final judgment is issued ratifying the plan, such plan is binding on all creditors of all categories and constitutes an enforceable title.

10. Involuntary reorganisations

What are the requirements for creditors to commence an involuntary reorganisation? What are the effects of the commencement of the reorganisation?

As described above, the conciliation agreement can be initiated by the debtor, while a reorganisation plan may be submitted by the debtor or the receiver. An individual creditor does not have the authority to initiate any of the above reorganisation procedures. Both procedures are subject to the participation of or the approval by a majority of creditors and the approval by the court.

11. Mandatory commencement of insolvency proceedings

Are companies required to commence insolvency proceedings in particular circumstances (to avoid personal liability to directors and officers or otherwise)? In what circumstances must companies do so? If proceedings are not commenced, what liabilities can result?

Under the Bankruptcy Code the debtor is obliged to file himself the application for declaration into bankruptcy no later than 15 days from the cease of payment (see question 8). If the members of the board of directors of a societé anonyme or the administrators of a company limited by shares do not duly submit the application for declaration into bankruptcy and such conduct is imputed to their fault, both the directors or the administrators and any accomplices thereof are liable to restitute the damage caused to the creditors by the debts, if any, which arose from the date on which the application for submission into bankruptcy should have been submitted until the actual adjudication of bankruptcy.

12. Doing business in reorganisations

Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use of assets and to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

As mentioned above, the conciliation agreements may be concluded at the pre-bankruptcy stage. So the debtor has not at the time been deprived of the management of its business.

In case of a reorganisation plan, the debtor may manage itself its assets, upon ratification of the plan by the court, but only for the purposes of fulfilment of the plan, unless the plan provides otherwise. Any new assets acquired by the debtor should be destined to the fulfilment of the plan, and if the plan is annulled and a new bankruptcy is opened, they become part of the bankruptcy estate.

The fulfilment of the terms of the plan and the relevant business activity of the debtor is supervised by the receiver as a matter of law and despite relevant provisions of the plan. The plan may provide that certain activities of the debtor are subject to the consent of the receiver. The supervision by the receiver lasts for three years from the ratification of the reorganisation plan, unless the plan provides otherwise.

13. Rejection and disclaimer of contracts in reorganisations

Can a debtor in a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party?

In general, in bankruptcy proceedings (irrespective of whether such proceedings lead to liquidation or reorganisation), all pending, as of the time of declaration into bankruptcy, two-sided agreements concluded by the debtor remain in force. The receiver may, pursuant to article 29 of the Bankruptcy Code opt for the performance of such contracts that the receiver becomes aware of on the basis of relevant list submitted by the counterparty of the debtor to the reporting judge. In this case the creditors substitute the debtor in such agreements. If the receiver does not exercise its right within 10 days from the submission of the report of the receiver to the creditors' assembly following the decision adjudicating bankruptcy, the counterparty of the debtor may set a deadline, upon the lapse of which the counterparty may rescind the contract and request indemnity. Agreements that give rise to continuing contractual relations remain in force, unless it is provided otherwise by the law or the agreement itself. The receiver may not opt-out, but it has the termination right provided by the agreement or the law. By contrast, agreements which are intuitus personae (ie, agreements which are closely connected with the debtor), or agreements in connection of which bankruptcy is provided as a termination event either as a matter of special law, or by a relevant stipulation are automatically terminated upon bankruptcy. Sale of goods with retention of title shall remain in place.

14. Sale of assets

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

Following the examination of the claims (see question 27) and to the extent that no reorganisation plan has been ratified or that such plan has been annulled, the bankruptcy proceedings enter the phase of the Creditors' Union (ie, liquidation of the bankruptcy estate) during which the creditors' assembly is authorised to decide the continuation of the business of the debtor for a specified time period or the sale of the bankruptcy assets either as a whole or in parts.

If the creditors' assembly decides the transfer of the insolvent business as a whole and such decision is ratified by the reporting judge, after a valuation thereof and a report by the receiver with a proposed price, a public bid is carried out. Similarly, transfer in parts may be effected by the receiver through a public bid. Immovable assets may be sold to the extent the secured creditors holding a lien over such assets have not initiated their auction until the phase of Creditors' Union. Upon payment by the bidder of the price, the bidder acquires full title over the assets of the business or the individual assets free from any encumbrance and any third party rights. In addition, if the sold asset bears security rights, these are not affected by the transfer and are paid off by the proceeds of the sale.

15. Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by secured and unsecured creditors are imposed by legislation or court order in liquidations and reorganisations? In what circumstances may secured or unsecured creditors obtain relief from such prohibitions?

As mentioned, upon commencement of bankruptcy proceedings the creditors are prohibited from instigating court actions of the recognition or payment of a monetary claim as well as commencing or continuing enforcement procedures against the bankrupt debtor. Any acts in violation of such principle are null and void. Any pending proceedings are stayed and cannot be continued by the creditors. Exceptions apply for the secured creditors who can pursue individual execution for satisfying their claim solely by the encumbered asset up the moment of the Creditors' Union phase. However, to the extent that such enforcement measures taken by secured creditors involve assets which are operationally linked with the business operations or the productive unit of the debtor, they are suspended until the ratification by the court of the reorganisation plan (see question 9) or the decision of the creditors' assembly regarding the continuation of the bankruptcy proceedings (see question 14). This suspension is carved out if the encumbered asset is owned by a guarantor or third party and if the security has been granted by the special law L/3301/2004 re cash and financial instruments as collateral.

16. Arbitration processes in bankruptcy

How frequently are arbitration procedures used in insolvency proceedings? What limitations are there on the availability of arbitration procedures in insolvency cases? In insolvency proceedings, will the court allow arbitration proceedings to continue after an insolvency case is opened?

According to prevailing opinion in court precedents an arbitration clause is no longer valid and the arbitrators are no longer authorised to deal with the case, if prior to the issuance of an arbitral award one of the parties to the arbitration is declared bankrupt. The commencement of bankruptcy proceedings cause arbitration to be interrupted. However, part of the legal doctrine has supported the view that the arbitration clause remains unaffected by the bankruptcy. Arbitration procedures cannot be used in relation to bankruptcy cases.

17. Set-off and netting

To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Any set-off rights of creditors of the debtor survive the bankruptcy to the extent that all the requirements for the set-off (ie, existing mutual and due and payable claims) have been fulfilled prior to bankruptcy.

Thus, no set-off is permissible if an insolvency creditor acquires its claim or becomes a debtor of the bankruptcy estate following the commencement of the bankruptcy proceedings or acquires its claim before the bankruptcy proceedings but by means of a voidable transaction.

Contractual set-off is not permissible following bankruptcy and if agreed during the 'suspect period' (see question 31) is revocable.

The above restrictions do not apply to:

- the netting of claims under securities settlement system;
- transactions related to derivatives in which one counterparty is the state, a credit institution or an investment firm on the basis of an agreement with a certified date prior to the bankruptcy (art 16 of Law 3156/2003); and

- agreements for granting financial collateral (eg, cash deposits, pledges or fiduciary transfers of securities (Law 3301/2004).

18. Intellectual property assets in insolvencies

May the licensor or owner of the IP terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with an IP licensor or owner to continue to use the IP for the benefit of the estate?

What applies in general for agreements that give rise to continuing contractual relations captures also license agreements and in general agreements of exploitation of IP rights (see question 13). In practice, the receiver, replacing the debtor as either the licensor or the licensee may not opt-out from the agreement, but it has the termination right provided by such agreement or the law.

19. Post-filing credit

Does your country's insolvency system allow a debtor in a liquidation or reorganisation to obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

Bankruptcy Code allows post-bankruptcy credit in case of reorganisation or conciliation agreement. The lenders enjoy first-rank general privilege in case the reorganisation or the conciliation was not successful.

20. Successful reorganisations

What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan create releases in favour of third parties, and, if so, in what circumstances?

The Bankruptcy Code provides for the minimum content of the reorganisation plan as follows:

- information on the financial status of the debtor and a comparative analysis of the proposed measures as opposed to the alternative of liquidation;
- description of the proposed measures mainly relating to corporate restructurings financing of the debtor, business plans etc;
- impact on the claims of the creditors or to any third party such as decrease of claims, deferral of payments, waivers etc;
- if the proposed measure is the continuation of business, a valuation of the bankruptcy estate as opposed to the valuation of such estate in case of a liquidation;
- if the proposed measure involves a third party assuming the debts, a declaration by such third party; and
- a report of an independent expert, if the plan is submitted by the debtor.

The plan should recognise different categories of creditors (secured creditors, general privileges, unsecured creditors and subordinated creditors) and be based on the principle of equal treatment of creditors of the same category. The competent court conducts a preliminary examination on the feasibility of the plan and, if it is initially approved, is subject to the approval of the creditor's assembly within three months with a majority of 60 per cent of the total claims, including 40 per cent of the secured claims. The debtor is entitled to waive the plan until the commencement of the voting. The plan is finally ratified by a court decision.

The plan may provide for the release of third-party liabilities. However, if the plan is subsequently annulled by the court such a release would be revocable (see question 32).

21. Expedited reorganisations

Do procedures exist for expedited reorganisations?

As stated above, the debtor is entitled to file an application for declaration into bankruptcy in case of 'imminent failure' before actual cease of payments and simultaneously submit a reorganisation plan in order to expedite the procedures.

22. Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of the plan not being approved? What happens if there is default by the debtor in performing an approved plan?

As mentioned above, the court may reject the plan for the following specific reasons:

- the formalities prescribed by the Bankruptcy Code have not been observed, to the extent that such fact could materially affect the acceptance of the plan;
- public interest;
- the acceptance of the plan resulted from a fraudulent or bad faith act of the debtor, a creditor or the receiver; or
- the plan does not protect the opposing creditors mainly if it is not ensured that they will receive at least equal part of their claims as they would have received in case of liquidation.

Following its ratification by the court the plan may be annulled upon the request of any party having a legitimate interest if:

- it was revealed that the plan was a result of fraudulent acts of the debtor or a collusion of the debtor with a creditor or third party; or
- in case of material breach of its terms by the debtor, to the extent that the non achievement of the reorganisation is likely.

In addition, a creditor towards whom the debtor has breached its obligations arising from the plan may ask the court its release from the plan, upon which its claims are revived in the status they were before the plan and can be individually pursued.

23. Bankruptcy processes

During a bankruptcy case, what notices are given to creditors? What meetings are held? What committees are or can be formed? What powers or responsibilities do these committees have? May creditors initiate proceedings to pursue remedies against third parties?

Generally, the Bankruptcy Code introduces publication requirements of decisions of the court and any other act or invitation in public books and personal invitations addressed to creditors (eg, for the purposes of announcing their claims). The place and the time of the creditors' meeting is published in a public book.

The most important creditors' meetings are:

- a meeting during which the receiver submits its report;
- a meeting that decides the prospects of bankruptcy; and
- a meeting on replacement of the members of the creditors' committee.

The creditors' assembly may elect a creditors' committee, which will monitor the bankruptcy proceedings and assist the receiver.

Generally, decisions of the bankruptcy court are subject to in absentia annulment, appeal and cassation (only for violation of law and lack of substantiation).

24. Insolvency of corporate groups

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

There are no provisions on group insolvencies.

25. 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?

No such possibility exists for the court.

26. Enforcement of estate's rights

If the insolvency administrator is without assets to pursue a claim that is available to the estate, are there procedures by which the creditors can pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

The court may reject the petition for declaration into bankruptcy if the estate is not adequate to cover the costs of the whole proceeding. If, during the bankruptcy proceedings, it is proved that there are no adequate funds for the continuation of the proceedings, the court may in its own initiative, or upon request of the debtor, the receiver or a creditor, order the termination of bankruptcy proceedings.

27. Claims and appeals

How is a creditor's claim submitted and what are the applicable time limits? How are claims disallowed and how does a creditor appeal a disallowance? Are there any provisions that deal with the purchase, sale or transfer of claims against the debtor?

The creditors should submit to the receiver their claims within three months from the publication of the decision declaring bankruptcy. Copies of documents supporting or evidencing the claim should also be submitted. Creditors who did not submit their claims promptly may ask from the court at their own expenses to examine their claims. Examination of claims is effected by the receiver in front of the reporting judge. All disputes of the claims are examined by the court. Such decisions of the court are appealable. No provisions deal with transfer of claims against the debtor.

28. Priority claims

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

The claims which enjoy a general privilege rank ahead of secured creditors and after group claims (legal expenses and the administration expenses of bankruptcy). General privileges are distributed with following ranking:

- claims for financing the debtor in the framework of a conciliation agreement or a reorganisation plan;
- medical and funeral expenses of the creditor and his family, that arose within the last six months prior to the bankruptcy;
- employee salaries and lawyer claims that arose within the last two years prior to the bankruptcy;
- claims of farmers from the sale of agricultural products, that arose within the last 24 months prior to the bankruptcy;
- claims of the state arising from taxes due on the income of the property or the type of property under auction, that were born during the year of the auction or the previous one; and
- claims of social security funds for contributions, that arose within the last 24 months prior to the bankruptcy.

29. Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive insolvency so that they are enforceable against the debtor after it has reorganised?

Bankruptcy Code provides for an express carveout of the acqusition of a business within the framework of bankruptcy proceedings from article 479 of Greek Civil Code, according to which the acquirer of a business or a group of assets is liable for the existing debts of such business or group of assets up to the value of the transferred assets. Thus, no existing debts shall survive the transfer in a bankruptcy proceeding.

30. Distributions

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

The receiver is obliged to draft without any delay a list of distribution with regard to any amount received during bankruptcy as well as the proceeds from the sale of the bankruptcy assets and submit it to the reporting judge. The list is published and is subject to annulment petitions by any person having a legitimate interest within 10 days. The distribution is effected immediately as for claims in respect of which no annulment has been filed, whereas as for the disputed claims distribution is effected upon a final judgement. In case of reorganisation plans which have been ratified there are no restrictions and payment to the creditors are freely made pursuant to the plan.

31. Transactions that may be annulled

What types of transactions can be annulled or set aside in bankruptcies and what are the grounds? What is the result of a transaction being annulled?

Any acts of the debtor effected from the cease of payments up to declaration of bankruptcy – a maximum of two years prior to the declaration of bankruptcy (suspect period), which are detrimental to the creditors are revoked or are revocable. The Bankruptcy Code makes the following distinctions:

- acts that are mandatorily revoked (endowments and agreement in which the consideration owed by the debtor is disproportional to the benefit thereof, establishment of in rem security for securing pre-existing unsecured claims, payment of obligations, which have not fallen due); and
- actions that may be optionally revoked (any agreement or payment of an obligation of the debtor to a party, which was aware of the cease of payment of the debtor and such act or payment is detrimental to the creditors).

Certain acts are exempted, in particular those performed in the ordinary course of business and those exempted from the insolvency annulment by special laws (eg, netting of claims under securities settlement system, transactions related to derivatives, agreements for establishing financial collateral).

Any asset of the bankruptcy estate that was transferred by means of a void or voidable transaction has to be restored to the bankruptcy estate. Moreover if the acquirer acted in bad faith, the court may order compensation payable to the creditors.

32. Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether a transaction by an insolvent debtor can be annulled? May voidable transactions be attacked by secured creditors or by unsecured creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or suspension of payments or only in a liquidation?

As mentioned above, the suspect period may go back two years from the declaration of bankruptcy. In addition, such judicial review for revocation of acts of the debtor can go back five years from the declaration of bankruptcy if the debtor acted fraudulently aiming to the detriment of its creditors or to favouring some creditors, to the extent that the counterparty was aware of the debtor's fraud. The relevant court action is instigated by the receiver or by a creditor, insofar as such creditors had requested from the receiver to attack a specific act for a legitimate reason and the receiver failed to file such action within two months from the creditor's request.

Following ratification of the reorganisation plan no annulment actions can be instigated. However, acts of the debtor that are mandatorily revoked in accordance with the Bankruptcy Code (see question 31) may also be revoked if they are effected between the ratification of a reorganisation plan and its subsequent annulment, in which case the two-year suspect period is deemed to commence upon the final judgement for the annulment of the plan.

33. Directors and officers

Are corporate officers and directors liable for or can they be made to pay obligations owed by their corporations?

Personal liability of officers and directors and companies of limited liability for company debts is mainly a risk for companies limited by shares. In principle, the members of the board of a Greek company limited by shares are not liable vis-à-vis third parties for obligations owed by the company. However, exceptions apply. namely, the managing director, other company directors and managers are personally liable for non-payment of taxes and may be prosecuted for a misdemeanour and sentenced to imprisonment. The managing director and executive board of directors members are personally liable for non-payment of company debts in respect of social security contributions while criminal and pecuniary sanctions may be imposed on company representatives, who do not pay the employer's social security contributions.

34. Duties of directors to creditors prior to bankruptcy

Do corporate directors and officers have any liability for pre-bankruptcy actions by their companies? Can they be made subject to sanctions or penalties for other reasons?

According to a recent amendment to the Greek Corporate Law, members of the Board of directors of a company limited by shares are responsible towards the company as far as the administration of corporate issues is concerned, having the diligence of a 'wise businessman'. If they fail to do so, they will be liable to the company for any resulting damage. Same diligence is expected in case of financial difficulties of the company. As stated above (see question 11), if the directors delay in filing a declaration for bankruptcy or if the bankruptcy is attributed to gross negligence or willful misconduct of the directors, they are liable to compensate all damage incurred by the company's creditors.

Apart from this, a prison term of up to two years and pecuniary fines are imposed to directors who within the suspect period or six months before or after the declaration of bankruptcy take, inter alia, the following actions:

- carry out risky and detrimental actions that are inconsistent with the orderly management;
- fail to draft the financial statements or to keep the commercial books that are prescribed by law or prepare a balance sheet that makes the assessment of the financial status of the company more difficult; and
- conceal, remove or harm assets of the bankruptcy estate.

35. Creditors' enforcement

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

As mentioned above, creditors secured by a security in rem may enforce such security individually and cause the auction of the encumbered asset irrespective of the bankruptcy proceedings up to the Creditors Union phase (see question 15) whereupon the sale of the encumbered asset is effected by the receiver and the secured creditors are satisfied by the proceeds of such sale.

In addition, whoever claims that an asset does not belong to the bankruptcy estate has the right to request from the receiver the segregation thereof, which is allowed following a permit by the reporting judge.

36. Corporate procedures

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

Greek company law provides for liquidation procedures of corporations depending on the type of corporation. Broadly speaking, as regards a company limited by shares it may be wound up by virtue of a resolution of the shareholders' meeting for reasons specifically provided by law, or by virtue of a court decision upon petition of a person having a legitimate reason. Upon winding up, the company is submitted to liquidation, except in the case that it is declared bankrupt. Thus bankruptcy excludes liquidation under corporate provisions.

37. Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Bankruptcy proceedings can be concluded with the ratification of the reorganisation plan (see question 9), with the sale of all the assets of the bankruptcy estate (see question 14), due to inadequacy of funds (see question 26), after 10 years from the Creditors' Union, or 15 years from the declaration of bankruptcy.

38. UNCITRAL Model Law

Is the adoption of the UNCITRAL Model Law on Cross-Border Insolvency under consideration in your country? If so, what is the present status of this consideration?

Greece is considering adoption of the Model Law.

39. International cases

What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

As far as cross-border bankruptcy proceedings within EU, Regulation 1346/2000 applies. If the debtor's Centre of Main Interest (COMI) is

Update and trends

Greece is no exception with regard to the impact of the financial turmoil and the ongoing discussions on the enhancement of the liquidity and confidence in financial markets. In this context, Law 3723/2008 came into force regarding measures available to Greek licensed banks for increase of their liquidity through share capital increase, redeemable preference shares to be acquired by the state, state guarantees and state notes to be accepted by the banks. The measures would not exceed €28 billion in total.

In addition, Greece recently expanded, by virtue of Law 3746/2009, its deposit guarantee system providing already a maximum €100,000 (until the end of 2011) indemnity to depositors in case of default by credit institutions, to the investment services carried out by Greek licensed banks. As regards liquidation and restructuring provisions provided by the recent Bankruptcy Code, their efficiency has not been tested yet in full, although Greek companies in distress increasingly use conciliation procedures as a standstill period and an effort to rescue their business.

in an EU country, such country shall have jurisdiction in opening-up bankruptcy proceedings, while secondary proceedings can be opened in Greece to the extent that the debtor has a branch in Greece. EU insolvency proceedings are automatically recognised in Greece. Generally, foreign (other than EU) court decisions that declare insolvency proceedings shall be recognised in Greece and the Greek assets of the foreign debtor shall be subject to the foreign insolvency proceedings, provided that the decision is not incompatible with the Greek public policy and bones mores has been ruled by a court which has competence and has applied the appropriate law according to Greek International Law (article 780 of the Greek Civil procedure Code). Creditors' rights in rem over assets that are situated in Greece are not affected by the foreign insolvency procedures. Foreign creditors are entitled to participate in Greek bankruptcy proceedings in the same way as domestic creditors. The Brussels Convention on the recognition and foreign judgements has been implemented in Greece.

40. 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 rarely used Regulation 1346/2000. Until now only two cases resolved upon cross border insolvencies. In the most recent one heard in 2007 the court recognised the competence of the court of Netherlands as COMI but since the case involved a dispute pending prior to the insolvency, proceeded to review the case (by virtue of article 4 paragraph 2(f) and 15 of the Regulation) and rejected the action by applying Greek Bankruptcy Code regarding suspension of individual measures for non-secured creditors (see question 15). Greek courts have not entered into cross-border insolvency protocols and have not held joint hearings with foreign courts.

41. Pending legislation

Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

The Bankruptcy Code has replaced, since 16 September 2007, the previous outdated and fragmented provisions of Greek bankruptcy law. Following this major reform no other amendment in the relevant legislation is pending.

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Greece

Applicable bankruptcy law, reorganisations: liquidations
Law 3588/2007 applicable since 16/9/2007. The adopted EU Insolvency Regulation regarding cross-border insolvencies
Customary kinds of security devices on immoveables
Mortgage Prenotations of mortgages
Customary kinds of security devices on moveables
Pledge on chattels, retention of title, fiduciary transfer of movables.
Stays of proceedings in reorganisations/liquidations
For the duration of bankruptcy proceedings leading to both liquidation or restructuring, claims cannot be enforced individually by creditors. Exceptions apply for secured creditors. Same stay of proceedings applies for conciliation arrangements.
Duties of the insolvency administrator
All powers of the debtor regarding the administration and disposal of the bankruptcy estate pass to the receiver. In case of liquidation, the receiver pursues the liquidation of the estate and distribution of the proceeds to the creditors.
Set-off and post-filing credit
Generally, set-off rights of creditors survive bankruptcy if the set-off position has been created prior to bankruptcy. Post-filing credit is possible in case of reorganisation and conciliation. Creditors within the framework of a reorganisation scheme enjoy first-rank privilege.
Filing claims and appeals
Creditors should submit their claims to the receiver within three months from the publication of the decision ordering the bankruptcy. If a claim is disputed the relevant complaint will be examined by the court.
Priority claims
General privileges which rank after expenses and ahead of secured claims are provided by law
Major kinds of voidable transactions
The court may set aside transactions which are detrimental to the creditors. Exceptions are also provided.
Operating and financing during reorganisations
The debtor may manage its business following the ratification of a reorganisation plan for the purposes of the objectives of the plan
Requirements for approval of reorganisations
A reorganisation plan should be accepted by the creditors and be ratified by the court. A reorganisation plan may be submitted by the debtor or the receiver
Liabilities of directors and officers
The members of the board of directors or administrators are personally liable if they do not file a petition for application into bankruptcy within 15 days after the cease of payments
Pending legislation
No relevant legislation is pending to our knowledge

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