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Restructuring & Insolvency

in Greece



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Legal framework

Legislation

What is the primary legislation governing insolvency and restructuring proceedings in your jurisdiction?

The primary legislation governing insolvency and restructuring includes:

- Law 3588/2007 – the Bankruptcy Code – which regulates bankruptcy and the pre-bankruptcy rehabilitation procedure.
- Law 4307/2014, which provides for the special administration procedure;
- Law 4354/2015, which provides for a specified legal framework for handling the sale and management of non-performing loans;
- Law 4469/2017, providing for the extrajudicial debt-settlement procedure;
- Law 3869/2010, which regulates the insolvency of private individuals (ie, those that do not fall under the scope of the code); and
- EC Regulation 848/2015, which came into effect as of June 26 2017 on insolvency proceedings (replacing EC Regulation 1346/2015) and Law 3858/2010 (adopting the 1997 United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency).

Regulatory climate

On an international spectrum, is your jurisdiction more creditor or debtor friendly?

Post-bankruptcy proceedings largely focus on achieving the collective satisfaction of creditors on the basis of their proper rankings. Pre-insolvency proceedings are oriented towards the continuation of the business of the debtor and restructuring its debts, thus preserving values for creditors. With this objective, pre-insolvency proceedings also tend to be more creditor friendly. In most proceedings, creditors may initiate insolvency proceedings on their own initiative with little (if any) involvement of the debtor.

Sector-specific regimes

Do any special regimes apply to corporate insolvencies in specific sectors (eg, insurance, pension funds)?

The following special regimes apply to corporate insolvencies:

- The Credit Institution Law (4261/2014) combined with Law 3458/2006 on the recovery and resolution of credit institutions and investment firms;
- The Insurance Undertakings Law (4364/2016) (adjusting Greek legislation on the EU Solvency II Directive (2009/138)), concerning the taking-up and pursuit of the business of insurance and reinsurance;
- The Investment Undertakings Law (4514/2018) (transposition of EU Markets in Financial Instruments Directive – MiFID II (2014/65/EU)), providing for a special liquidation procedure; and
- The Public Undertakings and Organisations Law (3429/2005) on the special liquidation of private law public entities.

Reform

Are any reforms to the legal framework envisaged?

No specific reform plans are currently under way.

Director and parent company liability

Liability

Under what circumstances can a director or parent company be held liable for a company's insolvency?

Directors may be held liable in case of company insolvency for:

- culpable delay in filing for bankruptcy (ie, not filing within 30 days of when a company is deemed to have a general and permanent inability to pay its due debts (status of cessation of payments);
- causing a cessation of payments due to gross negligence or wilful misconduct (this is mainly liability for bad management and wrong business decisions); and
- any tortious acts or omissions that took place during their management or representation of the company (Article 71 of Civil Code).

Directors also face personal liability to social security organisations and tax authorities for certain company debts.

Directors may also be held criminally liable if they have conducted specific actions contrary to prudent management norms during the hardening or suspect period (determined by the court declaring the company's bankruptcy and extending up to two years before said declaration) or six months before or after the declaration of bankruptcy, which includes:

- hiding, passing over or damaging company assets;
- entering into non-profitable, speculative or risky contracts, allocating excessive amounts in gaming, betting or uneconomical expenditure or agreeing to indebtedness for these purposes;
- falsely representing the debtor of other parties or acknowledging non-existing rights of other parties;
- failing to maintain the obligatory commercial books, or keeping or altering the books and thereby obstructing the discovery of the actual financial status; and
- reducing the financial status in any other way, or omitting to state or hiding contractual relationships.

Directors face personal liability:

- for favourable treatment of creditors if, while the company is in a status of cessation of payments, or threatened failure to regularly meet due and payable monetary obligations, they satisfy creditor claims or provide security, knowingly favouring a creditor against other creditors; and
- in case of receiving payment advances in excess of those provided in the company's articles of association.

A majority shareholder could be considered liable for the company's bankruptcy only in very exceptional cases (rarely approached by courts) – for example, in cases of lifting the company's corporate veil or abuse of the corporate form in order to circumvent legal obligations.

A parent company will not be held liable for the obligations of the debtor unless specific tortious or grossly negligent acts or omissions of the parent company caused the bankruptcy of its subsidiary, in which case the directors of such company could also potentially be held liable for such acts and omissions.

Defences

What defences are available to a liable director or parent company?

Depending on the legal bases used in each case, directors may prove that they have acted with prudence and in the manner appropriate for each case and, where applicable, prove that they have not acted with negligence or in bad faith or with knowledge of the possibility of the company being led into insolvency.

Due diligence

What due diligence should be conducted to limit liability?

According to legal theory, before bankruptcy, directors should act within the duty of care of a diligent businessperson with respect to risk taking, in accordance with good faith based on sufficient information.

From the time when the company is considered to be on the verge of bankruptcy, a higher threshold will apply, since it is required that the management act in the creditors' interests. The rule of business judgement may therefore be insufficient for justifying acts of the management which pose risks leading to the decrease of corporate assets.

Position of creditors

Forms of security

What are the main forms of security over moveable and immovable property and how are they given legal effect?

The main form of security established over immovable property (including certain movable assets: eg, vessels) is

mortgage. In the case of real estate only, pre-notation of mortgage is the usual form of security. They are established through a court order and registration of the relevant security with the public books.

Movable property may be subject to a pledge or fixed and floating charges.

According to the Civil Code and special legislation, a pledge may be established over claims, bank accounts and shares. A security right may also be created over financial collateral arrangements.

Ranking of creditors

How are creditors' claims ranked in insolvency proceedings?

Creditors bankruptcy liquidation claims are classified into the following categories:

- Costs pre-deducted from the liquidation proceeds before the satisfaction of any other class of creditors, including:
 - o judicial fees relating to the administration of the bankruptcy estate; and
 - o claims of the group creditors (arising in the course of bankruptcy and as a result thereof).
- Claims that are equipped with a special privilege over certain movable or immovable property or money including claims:
 - o for expenses incurred in the six months before the declaration of bankruptcy with the view to maintaining the particular asset;
 - o for the capital and interest accrued within the last two years for claims secured with an in rem security (pledge, pre-notice or mortgage); and
 - o for expenses incurred for the production and harvesting of crops.
- Claims that are equipped with a general privilege, including claims:
 - o for new money injected or goods or services provided to ensure the continuation of the company's activities and payments under a rehabilitation agreement, reorganisation plan or special administration procedure;
 - o from dependent employees and lawyers;
 - o from the state for value added tax and withholding taxes imposed with surcharges of any nature;
 - o from social security organisations; and
 - o from the state and local government bodies for all causes.
- Unsecured claims and claims of secured creditors whose security does not suffice for the full satisfaction of their claims.

If more classes of creditors concur, after payment of pre-deducted claims (and if new money claims concur with unsecured claims following full repayment of the first category), creditors are satisfied as follows:

Law 4512/2018 introduced a differentiated ranking system, which is applicable in parallel with the above ranking, specifically for claims made after January 17 2018 (ie, the date of entry into force of the law) which are secured with a pledge or a mortgage over any asset (which had not previously been encumbered).

According to this ranking system, the above classes of creditors are satisfied in the following order:

- pre-deducted claims;
- claims of employees for salaries of up to six months and up to a certain amount, which may be calculated on the basis of the law;
- claims for new money;
- secured claims (excluding specific claims);
- generally privileged claims and remaining secured claims; and
- unsecured claims.

Can this ranking be amended in any way?

The Bankruptcy Code provisions on creditors' rankings are considered mandatory (*ius cogens*) and may not be amended through relevant contractual arrangements. Certain provisions of law refer to 'creditors ranking

last' (subordinated creditors) (ie, even after unsecured creditors). However, contractual arrangements altering the core provisions on ranking may not be followed in case of bankruptcy to the extent that they contravene mandatory code provisions.

Foreign creditors

What is the status of foreign creditors in filing claims?

No differentiation exists with regard to foreign creditors.

Unsecured creditors

Are any special remedies available to unsecured creditors?

Unsecured creditors are usually fully impaired in a restructuring, unless they are key suppliers or have special negotiating power. Nevertheless, for a rehabilitation or an extrajudicial debt settlement agreement to be ratified by the court, it should be found that creditors are not worse off than they would have been in the case of bankruptcy liquidation. Unsecured creditors can exercise the regular judicial remedies (eg, recourses, third-party objections) available to all creditors to intervene in the insolvency process.

Debt recovery

By what legal means can creditors recover unpaid debts (other than through insolvency proceedings)?

According to the Code on Civil Procedure, enforcement proceedings are available to all creditors, including filing applications for obtaining provisional measures (eg, conservative arrests of assets). Nonetheless, following a declaration of bankruptcy, the Bankruptcy Code provisions are strictly followed, except for secured creditors which may elect to enforce their securities on particular assets according to the Code on Civil Procedure (eg, mortgage and pledge).

Is trade credit insurance commonly purchased in your jurisdiction?

Credit insurance is provided as a non-life insurance class according to Law 4364/2016 and includes coverage of the insured's risk that may arise from its debtors' general insolvency. It is not unusual that a company purchases such insurance to cover relevant risks.

Liquidation procedures

Eligibility

What are the eligibility criteria for initiating liquidation procedures? Are any entities explicitly barred from initiating such procedures?

An application for the declaration of bankruptcy may be filed by the debtor, its creditors or the public prosecutor (rarely used in practice) if the debtor is in cessation of payments, a threatened state of inability to fulfil its due obligations or in case of possible insolvency. In the latter two cases only the debtor may initiate the bankruptcy procedure.

Persons eligible to follow these proceedings include merchants and associations of persons with legal personality that pursue an economic purpose. Natural persons (not merchants) may follow the procedures provided by Law 3869/2010.

Procedures

What are the primary procedures used to liquidate an insolvent company in your jurisdiction and what are the key features and requirements of each? Are there any structural or regulatory differences between voluntary liquidation and compulsory liquidation?

Bankruptcy, in the majority of cases, leads to the liquidation of the business's assets (compulsory liquidation).

The main stages of bankruptcy proceedings are as follows:

- application for the declaration of bankruptcy;
- interim measures decision (on application of anyone having a legitimate interest) prohibiting changes to the debtor's estate or a reduction in its value, typically including suspension of individual collection and enforcement actions;
- publication of the decision declaring bankruptcy – appointment of the bankruptcy administrator (the syndic) and the reporting judge on bankruptcy;
- sealing the insolvency estate;
- registration of mortgages over immovable assets of the bankruptcy estate and mortgages and pre-notice of mortgages against debtors to the bankruptcy estate;
- unsealing and inventory of the debtor's assets;
- announcement and verification of creditors' claims; and
- conclusion of the insolvency proceedings through either the 'union of creditors' stage, followed by the liquidation of the debtor's assets through mandatory auction and disbursements to creditors or a reorganisation plan.

Voluntary liquidation follows the law applicable to each entity according to its form (eg, limited liability company or *societe anonyme*).

How are liquidation procedures formally approved?

Bankruptcy decisions are rendered by the multi-member first-instance court of the place where the debtor's centre of main interests is situated.

What effects do liquidation procedures have on existing contracts?

Following the declaration of bankruptcy:

- ongoing bilateral contracts of a continuing character remain valid and in force unless otherwise provided by law (eg, in case of financial leasing contracts, which are automatically terminated on declaration of the lessee in bankruptcy);
- contracts of a personal nature may be terminated; and
- employment contracts are not automatically terminated.

What is the typical timeframe for completion of liquidation procedures?

The timeline for completion of liquidation procedures is largely dependent on the specific circumstances of each case. According to World Bank – 2018 Doing Business data, it takes approximately three-and-a-half years to enforce claims in bankruptcy, which is generally expected to improve, as the latest streamlining reforms of 2016 to 2017 gradually show their practical effects.

Role of liquidator

How is the liquidator appointed and what is the extent of his or her powers and responsibilities?

The decision declaring bankruptcy initiates the appointment of the syndic, who undertakes the administration of the company and runs the bankruptcy procedures, including the liquidation of the debtor's assets.

Under the current legal framework, a person will be appointed as syndic if he or she has been authorised to be an insolvency administrator (insolvency professional) following successful completion of relevant exams. A syndic has a general duty to protect the interests of both the debtor and its creditors, without prejudice to his or her duty of impartially conducting business administration, given that the syndic must aim at the collective satisfaction of creditors. Within this framework, he or she has an obligation of non-disclosure, non-competition and avoidance of any conflict of interests.

Court involvement

What is the extent of the court's involvement in liquidation procedures?

The court's involvement in bankruptcy proceedings extends to all stages of the procedure and refers to:

- declaration of bankruptcy, granting provisional measures and appointment of a syndic;

- hearing complaints and petitions; and
- cessation of proceedings due to lack of funds or easily liquidated assets necessary for the continuation of the proceedings.

Creditor involvement

What is the extent of creditors' involvement in liquidation procedures and what actions are they prohibited from taking against the insolvent company in the course of the proceedings?

Creditors may file an application for the declaration of the debtor's bankruptcy only if the latter is in cessation of payments.

Creditors' participation is crucial in the auditing claims process, conducted through the announcement and verification of claims.

After filing an application for the declaration of bankruptcy and through a relevant application, the court may order any preventative measures that it considers necessary to prevent any change to the debtor's estate that could be harmful for the creditors' satisfaction.

Following the declaration of bankruptcy, all individual recovery measures against the debtor are automatically suspended. The suspension does not apply with regard to creditors secured with a special lien or in rem security over the assets of the debtor, unless these are assets operatively and directly connected with the business activities of the debtor or with a production unit or exploitation. Financial collateral agreements are also exempt from suspension. The bankruptcy declaration does not affect the creditors' right to propose the set-off of a counterclaim against the respective claim of the debtor, provided that the set-off conditions were fulfilled before the declaration of bankruptcy.

Director and shareholder involvement

What is the extent of directors' and shareholders' involvement in liquidation procedures?

The application for the declaration of bankruptcy is submitted by the debtor's managing body.

On the issuance of the decision declaring bankruptcy, the syndic automatically undertakes administration of the company. Nevertheless, the court may assign the administration of the company's assets to the board, with or without restrictive conditions and under the condition that such administration be conducted in cooperation with the syndic if it deems that such assignment better serves the creditors' interests.

Restructuring procedures

Eligibility

What are the eligibility criteria for initiating restructuring procedures? Are any entities explicitly barred from initiating such procedures?

The main restructuring procedures provided under Greek law include the Bankruptcy Code rehabilitation procedure, the special administration procedure provided for in Law 4307/2004 and the extrajudicial debt settlement procedure of Law 4469/2017. The procedures may be initiated by any person falling under the ambit of the Bankruptcy Code (ie, merchants and associations of persons with legal personality that pursue an economic purpose), while independent professionals (who are not eligible under the Bankruptcy Code) may exceptionally initiate the extrajudicial debt settlement procedure of Law 4469/2017.

Procedures

What are the primary formal restructuring procedures available in your jurisdiction and what are the key features and requirements of each?

Rehabilitation procedure

Under the existing legal framework the rehabilitation procedure is effected through an application filed with the court for the ratification of a rehabilitation agreement concluded between the debtor and its creditors representing certain percentages of the debtor's obligations (creditors representing 60% of the overall claims against the debtor, including 40% of secured claims).

In order to file a petition for ratification of a rehabilitation agreement, the applying debtor should be in present or threatened inability to fulfil its due pecuniary obligation in a general manner. A relevant application could also be filed simply if there is the possibility of such inability. Debtors that have already reached the status of cessation of payments may commence the rehabilitation procedure with the simultaneous submission of an application for declaration of bankruptcy.

The existing code also provides the possibility for creditors to conclude a rehabilitation agreement without the debtor's participation, widening the scope of pre-bankruptcy procedures and aiming at forcing reluctant debtors to undertake rehabilitation instead of being declared bankrupt.

A necessary condition for the above 'creditor-driven' rehabilitation procedure (and for the rehabilitation agreement to be ratified by the court) is that at the time of conclusion, the debtor must be in a status of cessation of payments.

The rehabilitation agreement may regulate any aspect of the debtor's assets and liabilities, as well as:

- the alteration of the terms of its obligations;
- the capitalisation of debts with the issuance of shares of any type;
- the reduction of claims;
- the sale of assets;
- the transfer of all or part of the debtor's business to a debtor company or third party; and
- the suspension of individual actions of creditors for a certain period following the ratification of the agreement.

The rehabilitation agreement is submitted to the court for ratification.

Special administration procedure

The special administration application may be filed by creditors representing at least 40% of all claims against the debtor, among which should be at least one credit institution.

A hearing is scheduled within two months of filing and on examination of the application and fulfilment of the requirements prescribed in law, the court should accept the petition and appoint the person indicated as special administrator.

The special administrator must proceed with conducting a public auction for the totality or individual sectors or assets of the business.

The special administrator must publish an invitation for conduct of one or more public auctions in the media designated in the law (eg, the commercial registry, two daily newspapers and the company website), setting a date for submission of binding bids free of any conditions or reservations and accompanied by a letter of guarantee for the amount of the bid offered.

Following the conclusion of the submission process, the special administrator must unseal the bids and draft a report on the highest bidder. The report must be notified to all bidders and submitted to the court for approval.

Extrajudicial debt settlement procedure

The procedure is initiated through an application of the debtor, including a proposal for the settlement of its debts, and aims to conclude a debt settlement agreement with the mediation of a coordinator. Creditors are summoned to participate in the procedure (creditors representing 50% of all claims should participate in order for the settlement to proceed) and may submit settlement counter-proposals.

A debt settlement agreement is concluded between the debtor and certain majorities of the participating creditors (representing three-fifths of all claims and two-fifths of secured claims). The creditors and the debtor may freely formulate the content of the agreement subject to certain rules provided in the law and stipulate that certain claims (including refinancing claims) are preferentially treated.

The debt settlement agreement may be ratified by the court and thus be binding on all creditors (contracting or not).

How are restructuring plans formally approved?

The court will ratify the rehabilitation agreement if it concludes that:

- the debtor's business will become viable following ratification;
- the creditors' collective satisfaction will not be impaired (ie, non-contracting creditors will not be in a worse economic state than in the case of bankruptcy and liquidation of the debtor's business: the 'no worse-off' principle);
- the rehabilitation agreement was not the product of malice or another illicit act or bad faith of the debtor and creditors or any third party, and does not violate legal requirements; and
- creditors have not been treated unequally.

Once a rehabilitation agreement has been ratified by the court, it binds all creditors of the debtor, even those that are

not contracting parties to the agreement (cram-down effect).

In an extrajudicial debt settlement procedure, the court will not ratify the agreement in one of the following cases:

- if there is a breach of specific mandatory provisions of the law;
- if there is a breach of any rule of the procedure which has caused irreparable damage to any creditor;
- if creditors holding claims of an amount sufficient to reverse the agreement were not invited to participate; or
- if it is evidenced that the debtor does not fulfil the terms of the agreement.

What effects do restructuring procedures have on existing contracts?

The rehabilitation procedure aims at the preservation, utilisation, restructuring and recovery of the indebted business, without the impairment of the collective satisfaction of creditors. To this effect, the debtor is expected to continue its business and maintain its contractual relationships at least to the extent provided for under the rehabilitation agreement. In practice, rehabilitation agreements may provide for the continuation of certain contractual relationships considered beneficial for the debtor's business and the termination of others.

With regard to the special administration and the extrajudicial debt settlement procedure, the relevant legal framework explicitly provides that the fact that a debtor enters into the respective procedure does not constitute grounds for the termination of existing contracts.

What is the typical timeframe for completion of restructuring procedures?

A final decision is expected to be reached in less than a year for the rehabilitation procedure, including the conclusion of the rehabilitation agreement and filing of such for ratification. As for the special administration procedure, given that the law provides for certain deadlines in various steps of the procedure (without having been widely tested in practice), the whole procedure is expected to last between one and two years, while a shorter timeframe is envisaged for the completion of the extrajudicial debt settlement procedure.

Court involvement

What is the extent of the court's involvement in restructuring procedures?

All restructuring procedures pass through the court's approval. In the rehabilitation procedure, the court must ratify the rehabilitation agreement in order for it to obtain legal effect under the Bankruptcy Code and be binding on all creditors, while the court may also intervene if an objection to the procedure is submitted (eg, by a third party post-ratification) or in order to amend or nullify the agreement under certain circumstances provided for in the code.

In special administration the court intervenes in two stages:

- in order to accept the relevant application and appoint a special administrator; and
- in order to approve the special administrator's report on the highest bidder for the sale of the debtor's assets.

In the extrajudicial debt settlement procedure the court mainly intervenes in order to ratify or annul the agreement.

Creditor involvement

What is the extent of creditors' involvement in restructuring procedures and what actions are they prohibited from taking against the company in the course of the proceedings?

Creditor participation is crucial for the initiation and completion of restructuring procedures.

Under the rehabilitation procedure, from the filing of the rehabilitation agreement for ratification up to the issuance of the court's decision ratifying (or rejecting) the agreement, individual and collective enforcement measures against the debtor are automatically suspended for up to four months. Additional provisional measures or extension of the four-month suspension may also be granted through a relevant petition filed with the court. Such additional preventive measures do not affect the creditors' rights arising out of financial collateral agreements or from a closed-out netting clause in such agreements and employees' rights (except under certain circumstances). Further, provided that the debtor is in arrears for six or more monthly payments, the right to terminate the relevant lease agreement or request delivery of the leased property is not obstructed by the above preventive measures. Moreover, exceptions may be made by the court with regard to the scope of provisional measures if there is significant social cause.

In the special administration procedure, on acceptance of the relevant petition by the court, all enforcement

proceedings against the debtor are automatically suspended, while a similar suspension also takes place from the summoning of creditors to participate in the settlement negotiations, as well as from the filing of a ratification application under the framework of the extrajudicial debt settlement procedure.

Under what conditions may dissenting creditors be crammed down?

Once a rehabilitation or an extrajudicial debt settlement agreement has been ratified by the court, it binds all creditors of the debtor, even those who are not contracting parties to the agreement (cram-down effect). Provisional measures provided under the rehabilitation agreement are binding on non-consenting creditors, but only for a three-month period as of ratification.

Director and shareholder involvement

What is the extent of directors' and shareholders' involvement in restructuring procedures?

In the case of debtors/legal entities, their managing body may apply for the initiation of restructuring proceedings. In the case of the rehabilitation procedure initiated by creditors, the court may order the debtor to facilitate the proceedings by providing the necessary documents for the submission of the ratification application. Failure of the debtor to provide the ordered assistance will render the persons involved liable (in most cases this would be the directors or company management) for the crime of non-compliance with a court decision.

Special provisions of the Bankruptcy Code provide that if the debtor is in a state of cessation of payments and the court considers it probable that in case of liquidation the shareholders will not be reimbursed by the liquidation's proceeds, the court may appoint a special representative empowered to exercise the standing and voting rights of the debtor's shareholders who do not cooperate in making the required decisions for the implementation of the rehabilitation agreement.

Informal work-outs

Are informal work-outs available for distressed companies in your jurisdiction? If so, what are the advantages and disadvantages in comparison to formal proceedings?

There is no specific legal framework providing for informal restructuring proceedings. A debtor may reach any agreement with its creditors, but if this does not follow the prescribed types of restructuring proceeding lacking formal ratification by the court, it would not normally be binding on all creditors (ie, no cram-down effect).

Transaction avoidance

Setting aside transactions

What rules and procedures govern the setting aside of an insolvent company's transactions? Who can challenge eligible transactions?

The Bankruptcy Code provides for the revocation by the court of any detrimental or fraudulent transactions effected from the cessation of payments up to the declaration in bankruptcy, for a maximum of two years before the issuance of the bankruptcy decision (ie, the suspect or hardening period).

Acts that are mandatorily revoked – meaning that the only proof necessary for their revocation is that they were effected within the suspect period – include the establishment of in rem security or the granting of other securities of a contractual nature (eg, assignment of claims or guarantee) for pre-existing unsecured obligations, for which the debtor had not already assumed a corresponding obligation or for securing new obligations assumed by the debtor for replacing previously existing obligations.

Apart from acts mandatorily revoked, other acts concluded during the suspect period are subject to optional revocation, provided that they are detrimental for the group of creditors. Such acts include any bilateral act of the debtor or payment of its mature debts, provided that there is causal link between the act and the loss and the counter-party is aware of the cessation of payments of the debtor.

In addition, acts of the debtor that are concluded within the five years before the issuance of the decision declaring bankruptcy and intended to harm the creditors or benefit others are revoked if the third contracting party had knowledge of the malicious intention of the debtor at the time of performing the act.

The code and special Greek legislation provide for acts which are exempt from revocation, even if effected during the suspect period, including acts performed in the normal course of the business of the debtor and within the limits of ordinary transactions.

Following a claw-back action (revocation), anyone who has acquired an asset (movable or immovable) of the debtor is obliged to retransfer it to the insolvency estate. Regarding in rem securities granted during the suspect period in particular, the syndic may file a claim against the pledgee or mortgagee and request his or her resignation from the right to the pledge or mortgage and the return of the object to the bankruptcy estate.

Operating during insolvency

Criteria

Under what circumstances can a company continue to conduct business during an insolvency procedure?

Following the stage of verification of claims in bankruptcy, the creditors' meeting may decide to continue the debtor's commercial activity or some of its business sectors for some time.

The decision declaring the company bankrupt or a separate subsequent decision of the court (issued before the decision of the creditors' meeting) may, following an application of anyone with a legitimate interest, temporarily allow the continuation of the debtor's activities by the debtor or the syndic, if it is proven that this serves the interests of its creditors and to the extent necessary for maintaining the intangible value of the business.

Restructuring procedures do not in principle affect the company's ability to conduct business.

Stakeholder and court involvement

To what extent are relevant stakeholders (eg, creditors, directors, shareholders) and the courts involved in any business conducted during an insolvency procedure?

Creditors may decide or request the continuation of the debtor's business during a bankruptcy procedure.

On the issuance of the decision declaring a company bankrupt, the syndic undertakes the administration of the company, while the court may assign administration of the company's assets to the directors, with or without restrictive conditions and under the condition that such administration be conducted in cooperation with the syndic if it deems that such assignment serves the creditors' interests.

In restructuring procedures, the administration of the company remains with its directors.

Financing

Can an insolvent company obtain further credit or take out additional secured loans during an insolvency procedure?

The syndic may conclude new contracts in line with the obligations of serving the interests of the bankrupt company and especially the satisfaction of creditors. Claims arising from such new contracts are treated as group claims and, as such, pre-deducted claims satisfied before the satisfaction of all other claims.

Refinancing of the debtor to ensure the continuation of its activities under a rehabilitation agreement or reorganisation plan or during a special administration procedure is generally foreseen by the Bankruptcy Code. Such refinancing within the framework of the formal procedures is, in principle, preferentially treated with respect to other creditors.

Employees

Effect of insolvency on employees

How does a company's insolvency affect employees and the company's legal obligations to employees?

Special legislation applies along with the Bankruptcy Code provisions with regard to the protection of the employees of the debtor following its declaration of bankruptcy.

In general, following the bankruptcy declaration, the syndic may terminate employment contracts of an indefinite duration. Further, bankruptcy is deemed to be a serious cause for the termination of fixed-term employment contracts or contracts for the provision of services. Also, if the syndic foresees the viability of the business, the syndic or the debtor may request the preservation of the necessary positions of employment for a certain time. The terminated employees may participate in the bankruptcy procedure and claim unpaid wages and other benefits incurred before the bankruptcy declaration, as well as their legal severance amounts, while a super privilege is provided for certain claims of employees, under specific conditions. Non-terminated employees will be satisfied

from the liquidation proceeds as group creditors.

Provisional measures granted under a rehabilitation procedure do not extend to employee claims unless so ordered by the court due to significant reasons and for a limited time.

Cross-border insolvency

Recognition of foreign proceedings

Under what circumstances will the courts in your jurisdiction recognise the validity of foreign insolvency proceedings?

EU Regulation 848/2015 (for proceedings initiated after June 26 2017) provides for the recognition of proceedings initiated in another EU member state, provided that they fulfil the regulation's requirements. Court decisions of EU member states that do not fall under the ambit of the above regulation may be recognised according to EU Regulation 1215/2012.

Law 3858/2010, adopting the 1997 United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency, applies with regard to non-EU insolvency proceedings. Any other foreign decision may be recognised according to the Code on Civil Procedure following a relevant court decision to this effect.

Winding up foreign companies

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

The insolvency procedures provided under Greek law may be followed by a foreign company, provided that its centre of main interest is in Greece.

Centre of main interests

How is the centre of main interests determined in your jurisdiction?

In line with EU regulation on insolvency proceedings, the Bankruptcy Code provides that the centre of main interest of a debtor is the place where the debtor usually exercises the administration of its interests and is therefore identifiable by third parties. For legal persons, it is presumed, until the opposite is proven, that its centre of main interest is the place of its registered seat.

Cross-border cooperation

What is the general approach of the courts in your jurisdiction to cooperating with foreign courts in managing cross-border insolvencies?

EU Regulation 848/2015 provide for cooperation with foreign courts and bankruptcy administrators in case of foreign insolvency proceedings (especially in case of insolvency proceedings involving groups of companies).

Law stated date

Correct as of

Please state the date of which the law stated here is accurate.

May 15 2018.