INSOLVENCY
EUROPEAN RULES

© 2020 Dr. Thomas Voller
Umschlag, Layout und Satz: Bastian Groscurth
Druck und Bindung: Verlag T. Lindemann / Offenbach

ISBN 978-3-00-066196-9

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Foreword

Within the European Union there are already some common frameworks for insolvency proceedings. The first one was the Council Regulation (EC) No 1346/2000 of 29 May 2000 which has been replaced five years later by Regulation (EU) 2015/848 of 20 May 2015, entered into application on 26 June 2017.

This Regulation provides for rules governing the allocation of jurisdiction for the opening of insolvency procedures in the EU and, once opened, the rules applicable to those procedures, but it does not address or regulate disparities in national law between Member States.

On 26 June 2019 a new EU Directive on preventive restructuring frameworks on discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt (the Directive) was published under number 2019/1023. Member States must implement the Directive by 17 July 2021, with possible extensions of up to one year. The Directive looks to ensure that there are minimum restructuring measures available across Europe to enable debtors in financial distress to solve their problems at an early stage and avoid formal insolvency proceedings. The Directive is advertised as promoting mechanisms which will prevent the build-up of non-performing loans and ensure that debtors have access to restructuring tools, leading to a reduction in the risk of those loans becoming problematic. But this belongs to the future.

For the present it is still important to know and to follow the national rules. There are many questions which still depend on national law. It is important to understand for example which type of procedure has been opened, which are the time lines and rules for submitting credit claims, what are the effects on current contracts, if transactions entered into by the debtor prior to the opening of the proceeding can be contested by the administrator and so on.

This booklet wants to be a practical guide for companies and their credit managers when they have to face the insolvency of foreign debtors. The booklet contains information about the national rules of insolvency and bankruptcy proceedings in 25 different countries, members and non-members of the European Union.

In order to allow the reader easy orientation and fast information, all single contributions, written by the European members of EuroCollectNet, follow the same questionnaire scheme.

EuroCollectNet is a network of independent lawyers having the goal of pursuing cross border claims as efficiently and quickly as possible with the maximum cost savings for the clients. Members comprise only one lawyer per country in Europe. Clients referred to members within the network are provided with the same high level of service as if they were instructing their own lawyer.

This booklet is aimed at sales and credit departments of companies, in-house legal departments as well as Management personal planning to expand operations into new European markets. Today cross-border business within the EU, all over Europe and worldwide is growing from day to day and it is an important part of the responsibility of the Creditmanagement to keep the risks of export as small as possible.

“Insolvency laws in Europe” maybe used as a tool box. The answers in the questionnaires should not be treated as a definitive explanation of the law or applicable legal procedures. Each case must be dealt with on its own merits. A questionnaire should not be used as a substitute for obtaining expert professional advice and help from a lawyer.

Finally we would like to mention that each member is responsible for the report of his/ her own country. On the first page is the name of the country and at the end the name of the author. The authors are members of EuroCollectNet, you find them on the website www.EuroCollectNet.com and you may contact them for more details or for assistance.

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Insolvency and bankruptcy proceedings in Europe

AUSTRIA

1. Who may insolvency proceedings be brought against?

Insolvency proceedings can be brought against a debtor (natural person and legal entity).

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Insolvency proceedings can be initiated by the debtor himself as well as by any creditor when the debtor is illiquid or over-indebted by filing a petition to the competent court (high court for companies, district court for individuals).

3. How is a debtor's insolvency officially declared?

The debtor's bankruptcy is officially declared by the competent insolvency court and by publication with the insolvency registry (*Insolvenzdatei*), According to Section 2 of the Austrian Insolvency Code (*Insolvenzordnung*) the legal effects of insolvency proceedings shall commence at the start of the day following the publication of the content of the insolvency registry.

4. Where is the declaration of insolvency published? Are there online-registers?

The insolvency registry is accessible through the following webpage: http://www.edikte.justitz.gv.at.

5. Which different type of insolvency / liquidation proceedings do exist?

Although there is just one insolvency law in Austria, the proceedings differ depending if the debtor is a natural person or a legal entity. Therefore insolvency proceedings are categorized in:

- bankruptcy proceedings;
- debt settlement proceedings for natural persons.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

- Extrajudicial settlements ("silent settlements")

To avoid the opening of a court supervised insolvency proceeding, the debtor has to come to a comprehensive agreement with all of his creditors within 60 days after illiquidity or over-indebtedness occurs. The extrajudicial settlement is also termed as 'silent settlement' as the debtor does not show with the insolvency registry. The purpose of the extrajudicial settlement is for the debtor to extricate himself from the state of inability to pay without involving the court. If the debtor fulfils his duties to the creditors according to extrajudicial settlement, the debtor is discharged of his residual debts and no judicial insolvency proceeding will be opened.

- restructuring proceedings with or without self-administration;

These is a court supervised restructuring proceedings. The opening of such proceedings are published in the insolvency register. If a reorganisation plan has been approved by the creditors and finally confirmed by court, the debtor has to make payments according to the reorganisation plan within the set timeframe. Payments thus received cannot be challenged in a future insolvency proceeding.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

In case of restructuring proceedings without self-administration and also in case of bankruptcy the insolvency estate is controlled by a court-appointed insolvency administrator. The administrator is responsible for the continuation of the company in case of restructuring proceedings. If the business is closed due to bankruptcy proceedings the administrator is responsible for the realization and quota distribution of the assets to the creditors. For some certain legal acts an approval of the insolvency court is needed.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers or a privileged associations for the protection of creditors' rights

( ) Only an attorney

( ) Only a domestic attorney

(x) Other requirements for an individual filing a claim? When filing a claim, a court fee in the amount of EUR 23 has to be paid by the creditor

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(x) Claim should be submitted through court

(x) other: The filing of the claim is not restricted to a certain form, wherefore it can be submitted in writing or verbally to the competent court before deadline. To facilitate the lodgement of the claim, a form is available at following website: https://portal.justiz.gv.at/at.gv.justiz.formulare/Justiz/Insolvenz.aspx. If the creditor chooses to lodge the claim without the mentioned form, the filing must contain the information specified therein.

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

After opening the insolvency proceedings the creditors have to file their claims before deadline imposed by the insolvency court in the insolvency registry, which cannot be extended. Creditors missing the deadline have to file their claims no later than 14 days prior to the hearing on the examination of the final accounts to be considered; in that case they will have to pay a fee of EUR 50 plus VAT to the administrator. Claims not filed during the insolvency proceeding are excluded for ever.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

(x) Creditor's language is sufficient, when having his habitual residence, domicile or seat in another EEA state. In that case he may file and explain his claim in the official language of that country, but the filing must bear the heading "Lodgement of claim" ("Anmeldung einer Forderung") in German. If the lodgement is not made in German it is possible for the creditor to be requested to provide a translation of the filing.

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim. The evidence of the claim that is available has to be stated in the filing. If a dispute arises further evidence has to be presented to the insolvency administrator for him to acknowledge the claim. In case of a lawsuit the evidence has to be presented to the court.

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(x) A translation to the State's official languageis required if a dispute arises

( ) English is sufficient

(x) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

All claims, excluding

- interest arising after insolvency proceedings have opened and costs that have been incurred by the individual creditor as result of participating in the insolvency proceeding;
- fines for criminal offenses of any kind;
- claims arising from donations
- claims of bequests in insolvency proceedings over a decedents' estate

Regarding the retention of title please see Question no. 14 lit. c.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

a) Insolvency claims (Insolvenzforderungen)

Insolvency claims are claims of creditors, who have pecuniary claims against the debtor at the time of the opening of insolvency proceedings (insolvency creditors). All insolvency creditors are treated equally.

b) Bankruptcy claims(Masseforderungen)

Bankruptcy claims are claims that occur after the opening of insolvency proceedings. They are e.g. costs of the insolvency proceeding, all expenses concerning the maintenance, administration and management of the insolvent estate. These claims are to be primarily satisfied from the insolvency estate as soon as they are due irrespective of the stage of the insolvency proceedings.

c) Right of segregation *(Aussonderungsrecht)*

If there is property belonging to a third party found in the insolvent estate, the owner has the right of segregation. The owners' claim of segregation should also be asserted directly with the insolvency administrator as well.

d) Right to preferential satisfaction *(Absonderungsrecht)*

The creditors with the right to preferential satisfaction can demand separate satisfaction out of certain items belonging to the debtor. These secured claims are to be satisfied before those of

other simple insolvency creditors. Generally the opening of the insolvency proceeding does not affect the claim for preferential satisfaction. Exceptions apply.

e) Subordinated claims (Nachrangige Forderungen)

Subordinated claim is a claim of a creditor stating that his claim is to be fulfilled after all the other creditors have received the total amount of the lodged claim or when subordination of the claim is ordered by law.

f) Shareholder loans (Gesellschafterkredit)

Loans of shareholders with a controlling interest of more than 25% of the voting rights made to the company are repaid to the shareholders after insolvency proceedings are concluded and only after all creditors are satisfied.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

Enforcement proceedingsagainst the debtors' assets cannot be brought nor continued once the insolvency proceeding has been opened. Exceptions apply to creditors with right to preferential satisfaction or segregation.

16. What effect does insolvency proceeding have on pending lawsuits?

Pending litigations are discontinued upon the opening of the insolvency proceedings, but can be continued by the insolvency administrator or by the opposing party. A judgment given after opening insolvency proceedings is void. All claims, also claim subject to pending litigation have to be lodged with the insolvency court. If the claim is disputed by the insolvency administrator the claimant can resume the proceeding against the insolvency administrator.

17. What effect does insolvency proceeding have on current contracts?

In general, for bilateral contracts that have not yet been performed or not been entirely performed by both parties upon the time the insolvency proceeding has opened, the administrator may either decide to perform the contract on behalf of the debtor and demand the other party to perform his part or he may decide to recede from the contract. For certain contracts such as lease and employment contracts specific rules apply.

The contract can be terminated by the other party as well. If the termination of the contract might jeopardize the continuation of the debtors business, the contract can only be terminated upon a grave and weighty reason for a period of 6 months after the insolvency proceedings have been opened. These restrictions do not apply to claims for the disbursement of loans or employment contracts.

18. Under which conditions may set-offs be invoked?

Claims of creditors that can be set-off at the time of the opening the insolvency proceedings, don't have to be lodged in the insolvency proceeding. Conditioned claims or claims not yet due at the time of the opening of the insolvency proceeding, or claims not targeted on monetary payments can be set-off as well.

Set-off is not permitted if the creditor has become debtor after insolvency proceedings have been opened as well as if the claim was acquired after the opening the insolvency proceeding.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Transactions entered into prior to the opening of insolvency proceedings by the debtor and a third party which discriminate against other creditors and unduly decreases the assets of the debtor may be contested by the administrator provided that a specific contesting provision of the Austrian Insolvency Code is met. The contesting provisions are as follows:

a) Intent to discriminate (Gläubigerbenachteiligung)

Transactions intentionally concluded by the debtor to discriminate against creditors within the past 10 years prior to the opening of insolvency proceedings can be contested if the other contracting party knew of the debtor's intention. The period to contest transactions is 2 years, if the other contracting party should have known of such intent of the debtor. Special rules for related parties apply.

b) Squandering of assets(Vermögensverschleuderung)

This provision applies if the transaction was entered into within the last year prior to the opening of insolvency proceedings and the other contracting party knew or should have known that the transaction squanders the debtor's assets.

c) Dispositions free of charge*(Unentgeltlichkeit)*

Transactions made free of charge within the last 2 years prior to the opening of insolvency proceedings are contestable. Transactions relating to the fulfilment of statutory obligation, ordinary occasional gifts or disposals in a reasonable amount that were made for charitable purposes or to satisfy a moral obligation or considerations of decency cannot be contested.

d)* Preferential treatment of creditors*(Gläubigerbegünstigung)

A transaction falls under this provision if a transaction discriminates against one creditor vis-à-vis the others, or is intended to give preference to one creditor over the others

e) Knowledge of illiquidity (Kenntnis der Zahlungsunfähigkeit)

Transactions after illiquidity has occurred or insolvency proceedings have been opened can be contested if the other contracting party knew or was negligent in not knowing of the debtor's illiquidity or the filing of the petition for opening insolvency proceedings.

20. What are the rules of the distribution of proceeds?

In case of bankruptcy proceedings all of the insolvency estate is sold. After payment of the bankruptcy claims the proceeds are distributed to the creditors pro rata.If the assets are insufficient the creditors with bankruptcy claims are satisfied pro rata.

21. What are the conditions for and the effects of closure of insolvency proceedings?

Bankruptcy proceedings are terminated when all of the debtor's assets are distributed among the creditors. If it becomes apparent during the insolvency proceedings that the debtor's assets are insufficient to cover the costs of the proceedings, the insolvency proceedings are closed due to insufficient assets. In case of absorption proceedings, insolvency proceedings are closed after the opening of absorption proceedings. Reorganisation proceedings are closed after a reorganisation plan is adopted by the creditors and all priority claims are settled. Subsequently the debtor must fulfil his duties stipulated in the reorganisation plan at set timeframe, failing which, insolvency proceedings will be reopened.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Since the Austrian Criminal Code (*Strafgesetzbuch*) also contains provisions on insolvency proceedings, directors can also be subject to criminal liability for damages caused by failure to file for the opening of insolvency proceedings in time. Furthermore managing directors are exposed to criminal liability not just for intentional or fraudulent conduct, but also in case of grossly negligent interference with creditors' interests, fraudulent intervention with a creditor's claims, preferential treatment of creditors, and withholding of social security payments.

23. Are there any special issues to be mentioned for your country?

If the debtor is an employer, the administrator has the privileged right to terminate the employment contracts in compliance with a notice imposed by statutory law, collective bargaining agreements or any shorter period of notice in accordance with statutory termination restrictions. Deadlines for giving notice do not have to be met by the administrator. The employees have an extraordinary right to resign as well, when insolvency proceedings are opened upon their employer's assets, whereas the opening of insolvency proceedings is deemed a good reason. In case insolvency proceedings of the assets of the employer has been opened, the employees must file their claims to the competent court in due time as well as to the Insolvency Contingency Fund within 6 months of opening insolvency proceedings for them to receive payments they are entitled to resulting from the employment contract.

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INSOLVENCY AND BANKRUPTCY PROCEEDINGS IN EUROPE

BELGIUM

Since the Act of 11 August 2017 insolvency law in Belgium was fundamentally changed and for the first time integrated in the Economic Law Code.

Due the limits of this document, the answers below provide a general legal guidance on a number of key questions. The answers can not be seen as legal advice.

1. Who may insolvency proceedings be brought against?

An insolvency proceeding can be brought against:

- Any individual who exercises a professional activity;
- Any legal entity (except for public-law entities); and
- Every other organisation without legal personality.

Only when the organisation does not have legal personality nor a lucrative purpose, the organisation cannot be declared bankrupt (e.g. non-profit organisations without legal personality).

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

A debtor will be declared insolvent if he has durably ceased to pay his creditors and is uncreditworthy. Those two conditions are cumulative.

Insolvency can be asked by:

- The debtor himself;
- One or more creditors;
- A temporary administrator who has been appointed earlier in the pre-insolvency period;
- A special division of the court which investigates and checks companies in financial trouble can ask the public prosecution service to start a bankruptcy procedure;
- The public prosecution service.

3. How is a debtor's insolvency officially declared?

The bankruptcy is ordered by a judgement of the Commercial court.

4. Where is the declaration of insolvency published? Are there online-registers?

The bankruptcy is published in the Belgian Official Gazette, which can also be consulted online: https://www.ejustice.just.fgov.be/tsv/tsvn.htm.

The declaration of insolvency can also be consulted at the online digital database for bankruptcy proceeding, called the Central Solvency Register or "REGSOL" in short (https://www.regsol.be).

5. Which different type of insolvency / liquidation proceedings do exist?

Only one: the bankruptcy proceeding.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

Before an insolvency proceeding, there are three types of restructuring proceedings (judicial reorganisation):

- Amicable settlement: the enterprise can conclude a consensual settlement with all, two or more creditors.
- Collective agreement: the enterprise obtains the approval of a majority of creditors for a formal reorganization plan that would then bind all the creditors;
- Transfer under judicial supervision: transferring the enterprise or (part) of its activity under court supervision.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**

All these proceedings are court supervised and must obtain the approval of the court and have to be declared enforceable by it.

- **if the opening of the proceeding is published**

The judicial reorganisation will be published in the Belgian Official Gazette.

- **which is the purpose of the proceeding**

The purpose of the proceeding is to maintain continuity of the activities of the company, as the name of the law may predict: the (separate) Act of 31 January 2009 on the continuity of enterprises has been amended and is since 1 May 2018 fully incorporated in Book XX of the Economic Law Code.

- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**

All payments made in the framework of any of the proceedings above cannot be revoked in case of future insolvency unless the date of suspension of payment is set back to a date before the date of the insolvency, or in case of inconsistency with public order and good morals.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

From the day the Commercial court rules the bankruptcy order: the bankrupt loses control over all his assets to the liquidator.

By way of exception: the goods that the bankrupt trader (only for a natural persons) acquires during the bankruptcy (e.g. wage from new activities) are excluded from the assets of the bankruptcy.

The liquidator has the task to wind up the assets, which consists of realising the assets comprised in the estate with a view to satisfy the bankrupt's creditors' claims. The liquidator orders urgent measures as are needed to protect the assets.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

(x) other: The creditors who wish to obtain payment or invoke a preferential right, need to file a claim through the Central Solvency Register or 'Regsol' in short (https://www.regsol.be). Natural persons as well as foreign legal entities will have the option of filing the claim by sending a registered letter to the liquidator.

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

Yes, the bankruptcy order must specify the timeframe within which the creditors have to make their claims (this is only a directive) and the dates at which the list of claims will be closed.

In any case, the right to file a claim expires after one year since the insolvency order.

To make use of the retention of title, a very short period applies!

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

(x) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

(x) Other: the documents can also be added afterwards

12. Documents concerning the claim must be...

( ) Translated to the State's official language

( ) English is sufficient

(x) Original language is sufficient, however the court can ask the submitter to translate the documents at his own expense.

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

All types of claims can be lodged.

If the goods still can be found 'in nature' in the bankruptcy, retention of title is possible for 'movable' and 'immovable' goods. In order to get the retention of title recognised, a written clause drawn up at the latest upon delivery has to exist.

Although, for movable goods, it is possible that the titleholder loses his title when the goods incorporate with an immovable good on which he has no title. To prevent this, the owner of the goods has to register his title in the Property Register.

In the interest of the bankruptcy, the liquidator may oppose the claim and pay the seller the price agreed upon with the bankrupt debtor.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

There are numerous preferential rights, ranking these preferences is very complex. Hereby a brief overview:

It is important be aware of the fact that there is a difference between the general bankrupt's estate and specific goods of the bankrupt's estate. For some specific goods so called *'separatists'* will have a preferential right on these goods (e.g. creditor on mortgage) which will cause these goods to be placed outside of the estate (for the amount the preferential right is agreed upon).

Following ranking applies to the creditors of the general estate:

1. Debts incurred by the general body of creditors (e.g. wages of the employees after the declaration of the bankruptcy, wages of the insolvency administrator, social security contributions,…)
2. Claims in the estate insured with a special preferential right (e.g. the price of the non-paid goods when the goods are still in the estate)
3. Claims in the estate insured with a general preferential right (e.g. non-paid wages of the employees preceding the declaration of the bankruptcy)
4. Claims of ordinary creditors

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

Generally, enforcement proceedings brought by individual creditors are no longer possible when an insolvency proceeding has started. However, different rules apply to the '*separatists*'. For example: the creditor who has a mortgage and already started an enforcement proceeding before the declaration of bankruptcy, can still continue the proceeding.

16. What effect does insolvency proceeding have on pending lawsuits?

All proceedings relating to the estate pending on the date of the bankruptcy, in which the bankrupt party is involved, are legally suspended until the claim is filed. They remain suspended unless the liquidator resumes the proceeding in the interest of the estate.

17. What effect does insolvency proceeding have on current contracts?

A contract that is concluded because of the individual co-contractor, is terminated by the bankruptcy at the date of the judgement (parties can derogate from this rule).

Other contracts: the liquidator must decide immediately whether he will pursue the performance of these contracts. When he chooses to pursue the contract, the co-contractor will be paid by priority.

If the liquidator doesn't decide immediately, the co-contractor can contact the liquidator, whereafter the liquidator has to decide in 15 days whether the contract will be continued or not. When the liquidator doesn't answer on time or decides to not continue the contract, the contract will be dissolved.

18. Under which conditions may set-offs be invoked?

In insolvency procedures, set-offs can only be invoked if the claims are strongly related. This requirement is applied very strictly, whereby set-offs will be rarely approved.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

There is a '*suspect'* period, this is a period in which actions taken by the bankrupt can be declared unenforceable at request of the liquidator.

The bankruptcy order determines the date of suspension of payment on which the bankrupt ceased to pay. As a general rule, the law stipulates that the bankrupt is ceased to pay since the date the bankruptcy order is pronounced. So in general, there is no '*suspect*' period and the liquidator can not undo actions taken before the bankruptcy.

However, the date of suspension of payment can be set back by the court if there are serious indications and objective elements that unambiguously indicate that the payments have ceased before the bankruptcy order (maximum 6 months before the bankruptcy order).

But also actions that were made more than 6 months before the bankruptcy order can still be rejected. The liquidator can file a claim, in the interest of all creditors to have certain actions taken by the debtor with fraudulent prejudice to the rights of the creditors declared unenforceable.

20. What are the rules of the distribution of proceeds?

The distribution of proceeds follows the ranking of the claims. When a surplus is attained, this will be awarded to the debtor. When the debtor is a legal person, the surplus will be awarded to its shareholders.

21. What are the conditions for and the effects of closure of insolvency proceedings?

After the creditors and the debtor are called upon by the insolvency administrator for an inspection and approval of the accounts of the insolvency administrator, all disputes of claims and the liquidation need to be settled in order for the court to close the insolvency proceeding. After this, the legal person dissolves and ceases to exist.

The natural person will have the possibility to ask for remission of residual debts. This needs to be asked for in the declaration of insolvency of the debtor or in the 3 months after the publication of the court order declaring the bankruptcy.

The creditors will receive an insolvency certificate if they did not receive a payment from the bankruptcy.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

If the debts exceed the income, the directors, managers, executive directors, board members (either of the management or supervisory board), as well as all other persons who had the actual power to manage to company's affairs, may be held wholly or partly liable for the net liabilities if it is established that a manifestly gross error committed by them contributed to the bankruptcy.

Additionally, there is a joint and several liability for unpaid social security contributions, VAT and advance tax payment and a principle of 'wrongful trading' as ground for liability.

Furthermore, the bankruptcy does not offer coverage nor exonerates any criminal action.

23. Are there any special issues to be mentioned for your country?

The bankruptcy proceeding is quasi-completely digital with the use of the online digital database for bankruptcy proceeding, called the Central Solvency Register or "REGSOL" (https://www.regsol.be). The database will contain all data and documents relating to the Belgian bankruptcy proceedings.

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Insolvency and bankruptcy proceedings in Europe

CROATIA

Introduction

As a primary remark, please note that given the narrow scope of this questionnaire, it is not possible to provide a detailed and comprehensive overview of the Croatian insolvency law. In this regard, the answers to the questions below are given only in general, respectively as a brief summary, and shall not be used or considered as legal advice.

1. Who may insolvency proceedings be brought against?

In accordance with Insolvency Act (Official gazette no. 71/15, 104/17) insolvency proceedings may be brought against the debtor, respectively: (i) a legal entity or an (ii) individual debtor, i.e. a natural person (payer of tax on income from independent activities or a natural person who is a profit tax payer). In accordance with Act on consumers' insolvency (Official gazette no. 100/15, 67/18), insolvency proceedings may be brought against a consumer (any natural person who enters into a legal transaction or operates on the market outside his trade, business, craft or professional activity), only upon consumer's proposal.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Conditions for opening insolvency proceedings are inability to pay (Croatian: nesposobnost za plaćanje) and over-indebtedness (Croatian: prezaduženost). Insolvency proceedings may be instituted by: (i) a creditor against the debtor, (ii) the debtor, (iii) the Financial Agency (a legal entity that performs payment transactions in Croatia) – it shall submit a proposal to institute bankruptcy proceedings in cases stipulated by law, (iv) consumer.

3. How is a debtor's insolvency officially declared?

The debtor's insolvency is officialy declared by the competent commercial court.

4. Where is the declaration of insolvency published? Are there online-registers?

All court documents (including declaration of insolvency, respectively insolvency orders) shall be published on the website e-Court Notice Board (Croatian: e-Oglasna ploča sudova), on the following link https://e-oglasna.pravosudje.hr/stecajevi. unless otherwise stipulated by law. Delivery is deemed complete with the expiry of 8 days following the date of publication of the document on the website.

As of declaring of insolvency, wording "in insolvency" is added to debtor's name. Accordingly, applicable to insolvency debtors inscribed in any form of public registry, such as court registries (Croatian: sudski registar)/craft registries (Croatian: obrtni registar), the respective registries show that insolvency proceeding is instituted against the debtor. Consumers' insolvencies are published in the Registry kept by Ministry of Justice.

5. Which different type of insolvency / liquidation proceedings do exist?

- ordinary insolvency proceedings (Croatian: stečajni postupak)
- summary insolvency proceedings (Croatian: skraćeni stečajni postupak)
- consumers' insolvency proceedings (Croatian: postupak stečaja potrošača).

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

- Pre-insolvency proceedings (Croatian: predstečajni postupak)
- a special type of non-contentious procedure, different from the insolvency proceedings, carried out in order to regulate the legal position of the debtor and its relation toward creditors and to maintain its activity. It may be instituted if the court finds that there is a threat of inability to pay (Croatian: prijeteća nesposobnost za plaćanje). In this proceeding the debtor is obliged to draft a Financial and restructuring plan in which, for example, the debtor may suggest to the creditors the dynamics of repayment of the debts, even writing-off of part of creditors' claims.
- Restructuring according to insolvency plan (Croatian: stečajni plan) brought after of instituting the insolvency proceeding
- after instituting the insolvency proceedings, an insolvency plan may be drafted and it may depart from the statutory provisions on insolvency estate encashment and distribution. The insolvency administrator is entitled to submit the insolvency plan to the court up until the final hearing.
- Non-contentious procedure preceding consumer's insolvency proceedings for the purpose of concluding out of court settlement between the consumer and creditors.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**

The pre-insolvency proceedings and restructuring according to insolvency plan are supervised by the competent commercial court. Non-contentious procedure preceding consumer's insolvency proceedings for the purpose of concluding out of court settlement between the consumer and creditors is not court supervised.

- **if the opening of the proceeding is published**

The opening of the pre-insolvency proceedings shall be published as explained under Question 4.

- **which is the purpose of the proceeding**

Stated above under 5.1).

- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**

No.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The insolvency administrator represents the debtor. By opening the insolvency proceedings, debtor's management is revoked and by court appointed insolvency administrator becomes vested with the rights and obligations of the corporate bodies of the debtor/of the debtor, unless otherwise specified by the law. If the debtor continues to conduct its business operations during the insolvency proceedings, the insolvency administrator manages the business operations. The debtor/the debtor's management is obliged to provide the insolvency administrator with all relevant documentation and information.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

(x) ther requirements for an individual filing a claim: The filing of the claim is restricted to a certain form. It can be submitted in writing to the insolvency administrator before deadline.

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

(x) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

Creditors submit their claims to the insolvency administrator within 60 days of the date of publication of the decision on opening of the insolvency proceedings. This time limit cannot be extended and it excludes the claim forever. If the creditor does not submit its claim in due time, it cannot participate in the insolvency proceedings or expect the claim to be settled.Therefore, the court shall reject the application filed after the expiration of the time limit.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

( ) Creditor’s language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim. The evidence of the claim that is available has to be stated in the filing

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(x) Translated to the State’s official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

All type of claims can be lodged, however in the insolvency proceeding instituted in accordance with Insolvency Act against the individual debtor only claims arising from the performance of professional activity or related to the performance of the professional activity of that debtor may be lodged

If, prior to the opening of insolvency proceedings, the debtor has sold its movable property with the retention of title and has delivered the property into the possession of the buyer, the buyer may demand the performance of the sale and purchase contract. This also applies if the debtor has assumed further liabilities towards the buyer which they have not fully fulfilled or which they have only partially fulfilled. If, prior to the opening of insolvency proceedings, the debtor has bought an immovable property with the retention of title and has received it in possession from the seller, the insolvency administrator has the right of option. This means that the insolvency administrator may perform the contract instead of the debtor and demand that the other party perform the contract. If the insolvency administrator refuses to perform the contract, the other party may realise its claim due to default only as an insolvency creditor.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

The claims are ranked as follows:

a) preferential claims

b) subordinated claims

Ad a) preferential claims include claims of the employees and former employees of the debtor incurred up to the day of the opening of insolvency proceedings from an employment relationship, for the total gross amount, severance pay in the amount provided for by law or collective agreement and claims arising from compensation of damages due to injury sustained at work or work-related illness as well as all other claims against the debtor except claims ranked as subordinated.

Ad b) After the settlement of preferential claims, the claims ranked as subordinated are settled in the following order: (i) interest on claims of insolvency creditors since the opening of insolvency proceedings, (ii) costs of individual creditors incurred by their participation in the proceedings, (iii) fines issued for criminal offences or infringements and costs resulting from criminal or infringement proceedings, (iv) claims demanding free performance of a debtor, (v) claims for repayment of loans to replace capital of a member of a company or corresponding claim.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

After the opening of the insolvency proceedings, individual creditors may not seek enforcement or security against the debtor in respect of those parts of its assets that form part of the insolvency estate, or against other assets of the debtor. Exceptions apply to secured creditors (croatian: razlučni vjerovnici) and creditors with the right of separation (Croatian: izlučni vjerovnici).

16. What effect does insolvency proceeding have on pending lawsuits?

The insolvency administrator shall take over the lawsuits, including arbitration proceedings, concerning assets forming part of the insolvency estate which were ongoing at the time of the opening of insolvency proceedings, acting in the name and on behalf of the debtor.

17. What effect does insolvency proceeding have on current contracts?

In general, for contracts concluded between debtor and its contractual party that have not been performed or have not been fully performed at the time of opening of the insolvency proceedings, the insolvency administrator may decide to perform the contract instead of the debtor and demand that the other party performs the contract. If the insolvency administrator refuses to perform the contract, the other party may realise its claim due to default only as an insolvency creditor. For certain contracts, such as employment contracts and lease of real estate and premises contracts, different rules apply.

18. Under which conditions may set-offs be invoked?

If, at the time of the opening of insolvency proceedings, the creditor, in accordance with the law or contract, was entitled to set-off, the opening of insolvency proceedings has no effect on that right.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Legal acts undertaken prior to the opening of the insolvency proceedings that may cause harm to creditors or that favour certain creditors over others may be contested by the insolvency administrator on behalf of the debtor, and the creditors in insolvency. Omissions that caused the debtor to lose a right or on the basis of which the pecuniary claims against them were founded, maintained or secured are deemed equivalent to such legal acts.

20. What are the rules of the distribution of proceeds?

The distribution is carried out by the insolvency administrator. Prior to every distribution, the insolvency administrator must obtain the consent of the committee of creditors or the court, if no committee of creditors has been established**.** Creditors of the same pay out rank settle in proportion to the amounts of their claims, Creditors with subordinated claims can only be settled after (and if) the creditors with preferential claims are fully settled.

21. What are the conditions for and the effects of closure of insolvency proceedings?

After the final distribution has been concluded, the court issues a decision on closing the insolvency proceedings. All assets of the debtor entering the insolvency estate will be sold and distributed among the creditors

In case the assets of the debtor entering the insolvency estate are not sufficient either to cover the costs of such proceedings or are of insignificant value, the court invites persons having a legal interest in conducting the insolvency proceedings to pay within 15 days a down payment to cover the costs of preliminary and of the insolvency proceedings. If such persons do not pay the requested amount, the court shall issue a decision on opening and closing the insolvency proceedings.

After the insolvency proceeding has been finished, a debtor that is a legal entity shall be erased from the commercial register and ceases to exist while an individual debtor that is deprived of its status as an individual trader, entrepreneur or self-employed person.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Civil consequences:

- responsible persons of the debtor that is a legal entity shall be personally liable to the creditors for the damage incurred by the omission to submit the proposal for opening of the

insolvency proceedings within 21 days from the date on which the reasons for bankruptcy proceedings have occurred

Criminal consequences:

- in case the management of the company does not request the opening of insolvency proceedings, it's members can be fined or sentenced to prison of up to two years
- Causing insolvency
- Favouring creditors

23. Are there any special issues to be mentioned for your country?

No.

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Insolvency and bankruptcy proceedings in Europe

CYPRUS

Insolvency and bankruptcy proceedings, in Cyprus, are regulated by the Bankruptcy Law **'Chapter 5'** as well as the Bankruptcy Rules in the Subsidiary Law. After 2013, the Insolvency Prosedure was reformed and it was achieved firstly by passing entirely new statutes and secondly by the amendment both of the Companies Law **'Chapter 113'** and the Bankruptcy Law - Chapter 5.

Please note that it is highly impossible to explain or even summarise in a questionnaire the provisions of the abovementioned Chapters of the Cypriot Law. The Law is complex, detailed and subject to exceptions thus the below answers are a brief summary and in no circumstances cannot be used or considered as legal advice.

1. Who may insolvency proceedings be brought against?

Against physical persons and legal entities.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Insolvency procedures in Cyprus can be initiated by a creditor (Compulsory Liquidation) or by the company itself (Voluntary Liquidation). Usually in Compulsory Liquidations the Creditors issue a Court Order to initiate the Proceedings after a Debtor fails to comply with bankruptcy notice and when the assets of a company cannot meet its liabilities.

In order to initiate either voluntary or involuntary proceedings, the debt must exceed the amount of EURO15.000,00.

3. How is a debtor's insolvency officially declared?

By Court's Ruling.

4. Where is the declaration of insolvency published? Are there online-registers?

It is published in the Official Paper of the Republic of Cyprus and on the Official Receiver's website.

5. Which different type of insolvency / liquidation proceedings do exist?

Insolvency proceedings are be the following:

- Voluntary Liquidation
- Involuntary Liquidation
- Bankruptcy proceedings against a physical person,
- Personal Bankruptcy
- Dissolution

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

Receiving order

5.2. Please indicate for each of these proceedings

Through the receiving order an Official Receiver is appointed. The debtor will provide the Official Receiver details about the assets, debts and the creditors. The Official Receiver will distribute the assets among creditors. The Official Receiver establishes a general meeting of the creditors to start the bankruptcy procedure but will also allow the debtor to reach an agreement with his creditor.

- **if the opening of the proceeding is published**
  Yes.
- **which is the purpose of the proceeding**
  To distribute all the assets of the debtor and repay all existing debts of the company.
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  Payments cannot be revoked in case of a future bankruptcy proceeding.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

In general, the main obligation is to protect the interests of the Creditors.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(x) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

Depends on the procedure.

In general a Secure Creditor must file within 10 days of the notice of Bankruptcy his claim and it will be evaluated. If a Secure Creditor misses the timeframe he will not be able to proceed with legal actions.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

( ) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

(x) Other: indeed a written proof is the best evidence although the creditor can provide any document confirms/verifies the existence of claim.

12. Documents concerning the claim must be...

(x) Translated to the State's official language (plus with the original documents)

( ) English is sufficient

( ) Original language is sufficient

(x) The original documents (preferable not mandatory if you provide a sufficient reason why you provide copies)

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

Types of claims that can be lodged:

- Priority Claims
- Secured Claims;
- Unsecured claims

Claims for retention of title will be treated accordingly by the Court. Third-party property is not part of the bankruptcy estate if it can be separated from the debtor's property.

14. How are claims ranked ? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

- Priority Claims (taxes, wages etc)
- Secured Claims;
- Unsecured claims

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

In general, after insolvency is in effect, no legal action is permitted against the company, unless the Creditor issues a Court Order to file a lawsuit against the Receiver who is acting on behalf of the Company.

16. What effect does insolvency proceeding have on pending lawsuits?

The civil procedures are suspended and will continue after a Receiver is appointed. Subsequently, the Creditor issues a Court Order to file a lawsuit against the Receiver who is acting on behalf of the Company.

17. What effect does insolvency proceeding have on current contracts?

The Receiver will decide how to act based on the information he has.

18. Under which conditions may set-offs be invoked?

Depending on the type of procedure.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

In general, transactions/payments/securities etc may be voided if they have occurred during the notice of insolvency or after.

20. What are the rules of the distribution of proceeds?

- Priority Claims
- Secured Claims
- Unsecured Claims

21. What are the conditions for and the effects of closure of insolvency proceedings?

It depends on the type of insolvency proceedings.

- If the assets are not sufficient repay the debts, or
- when all the claims have been paid or
- arrangement between the Debtor and the Creditors or
- Court Ruling

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Yes, both civil and criminal liabilities, usually in regards to the Directors of a Company or the Receiver of the Company for mismanagement.

23. Are there any special issues to be mentioned for your country?

As it is mentioned above, Chapter 5 and Chapter 113 of the Cypriot Law as well as the regulations and the procedures in regards to Bankruptcy and Insolvency are multifaceted and very wide-ranging topics in order to specify special issues.

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Insolvency and bankruptcy proceedings in Europe

CZECH REPUBLIC

1. Who may insolvency proceedings be brought against?

Insolvency proceeding is civil proceeding subject of which is bankruptcy of the debtor and ways of its settlement. Insolvency proceeding may be brought against the debtor who may be natural person or legal entity. Insolvency proceeding cannot be brought against the state, municipality, Czech National Bank, Universal Health Insurance Company, Investment Guarantee Fund, public university, legal person shoes debts were taken by state.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Debtor is in bankruptcy if he has more creditors and monetary debts for more than 30 days after maturity and he is not able to perform these debts. It is supposed that debtor is not able to perform his monetary debts if he stopped payments of the crucial part of his monetary debts or he is not paying debts for more than 3 months after maturity or it is not possible to reach satisfaction of claims in execution.

Debtor who is legal person or businessman is in bankruptcy also in case he has more creditors and total of debts exceeds his assets.

For insolvency can ask either debtor of creditor.

3. How is a debtor's insolvency officially declared?

Only court can declare insolvency of the debtor.

4. Where is the declaration of insolvency published ? Are there online-registers?

On the web sites of the Ministry of Justice (www.justice.cz) is insolvency register and all started insolvency proceeding and further decisions, applications of claims issued during the insolvency proceeding etc. are published on these web sites. From the date of publication on these web sites are started all periods under the insolvency act.

5. Which different type of insolvency / liquidation proceedings do exist?

Under Czech law there are three types of insolvency proceeding:

- Bankruptcy
- Reorganization
- Debt relief procedure

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

None

5.2. Please indicate for each of these proceedings

- if the proceeding is court supervised YES
- if the opening of the proceeding is published YES
- which is the purpose of the proceeding

Purpose of the bankruptcy is the sale of the asset of the debtor and payment of the claims of creditors in percentual amount, carrying of the business of the debtor is stopped and legal entity is than erased from the commercial register.

Purpose of the reorganization is to continue in business of the debtor and partial recovery of the claims and the rest of the claims ceases to exist.

Purpose of the debt relief procedure is partial recovery of the claims of creditors in monthly instalments.

- if payments made in the framework of such proceeding will be revoked or not in case of future insolvency YES

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

Almost all powers of the debtor are transferred on the insolvency trustee. Insolvency trustee is entitled to handle with the bankruptcy asset, to perform rights of the shareholder, perform rights of the employer, carrying on business, book-keeping, tax payment etc.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(X) Claim should be submitted through court

( ) other:

Claim should be submitted only on form that is also published on the web sites and send either by certified letter in two copies or in electronic way with certified electronic signature.

9. Does a time limit for the filing of claims exist ? If yes, can it be extended ? If there is a time limit, does it exclude the claim for ever?

Upon the Czech law claims should be submitted in period set by court in decision declaring bankruptcy. Minimum length is 30 days, usually time limit is 2 months from the date of publishing of the decision declaring bankruptcy in the insolvency register. This period cannot be extended. If the claim is not filed within this period, the claim is excluded for ever. Filing of the claim has same effect for the limitation as filing of action to court.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

( ) Translated to the State's official language

( ) English is sufficient

(X) Original language is sufficient but court may ask for translation

( ) The original documents

(X) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

All secured and unsecured claims can be lodged, even though they were already applied to court or claims collected in execution.

If the debtor has sold an item with retention of title and delivered it to the buyer before bankruptcy is declared, the buyer may either return the item or insist on proceeding with the contract. If, before bankruptcy is declared, the debtor purchases and takes receipt of the goods with retention of title, the seller cannot ask the return of goods provided that he insolvency trustee fulfils obligations under the contract without undue delay after being invited to do so by the seller.

14. How are claims ranked ? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

Claims are divided on secured claims, unsecured claims and claims upon the bankruptcy asset. Secured claims are satisfied from the secured asset.

From the proceeds from the sale of the bankruptcy asset are at first satisfied claims upon the bankruptcy asset, at first fee and costs of the bankruptcy trustee, than alimony, wages, taxes, social and health insurance. Then other claims

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

In general proceeding started before declaring bankruptcy are suspended. Some proceedings set by law are not suspended such as criminal proceeding, alimony proceeding, proceeding about heritage. Creditor cannot start proceeding against the debtor after declaring bankruptcy.

16. What effect does insolvency proceeding have on pending lawsuits?

In general proceeding started before declaring bankruptcy are suspended. Some proceedings set by law are not suspended such as criminal proceeding, alimony proceeding, proceeding about heritage.

17. What effect does insolvency proceeding have on current contracts?

In general contracts are solved by the bankruptcy trustee. Bankruptcy trustee is entitled to terminate the current contracts.

18. Under which conditions may set-offs be invoked?

Set-off of the claims of the debtor and creditor after declaration of bankruptcy is possible, if conditions were fulfilled before the decision. It is not allowed to set-off claim if creditor did not filed application of claim to bankruptcy, acquired the claim upon ineffective legal act, knew about the bankruptcy of the debtor or creditor did not paid the rest of the claim of the debtor.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Avoidance actions can be filed by bankruptcy trustee or creditor. The right to oppose a legal action shall expire within one year of the declaration of bankruptcy. The court will decide these actions and bankruptcy proceeding cannot be finished before the decision of court about these actions.

20. What are the rules of the distribution of proceeds?

From the proceeds from the sale of the bankruptcy asset are at first satisfied claims upon the bankruptcy asset, at first fee and costs of the bankruptcy trustee, than alimony, wages, taxes, social and health insurance. Then other claims in percentage counted from the amount of total claims and proceeds upon the distribution resolution.

Distribution of proceeds does not take place in case of reorganization and debt relief procedure.

21. What are the conditions for and the effects of closure of insolvency proceedings?

In case of bankruptcy all asset of the debtor is sold and distributed among creditors. After closure of insolvency proceeding legal entity is erased from the commercial register.

In case of reorganization debtor continues to carry on business, claims are paid partly and the rest of the claims cease to exist.

In case of the debt relief procedure debtor pays monthly instalments to creditors and should pay at least 30 % of the claims of the creditors. If conditions are fulfilled, rest of the claims cease to exist.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Member of the statutory body of the debtor on whom was declared bankruptcy cannot be member of the statutory body of another company for 3 years from the closure of insolvency proceeding.

The court can also decide that members of the statutory body guarantee for debts of the debtor if they did not act properly and did not file petition for bankruptcy of the debtor upon the request of the bankruptcy trustee or creditor.

There are several relevant criminal offenses according to Czech Criminal Code connected with the bankruptcy proceeding.

23. Are there any special issues to be mentioned for your country?

No

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Insolvency and bankruptcy proceedings in Europe

DENMARK

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against persons, companies and any form of legal entity resident in Denmark.

There is only an exception for companies that are not finally registered in the Danish Register of Companies (Erhvervsstyrelsen). If a company has not yet been registered insolvency proceedings can only be brought against the founding entities.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

When debtor is insolvent, bankruptcy proceedings must be commenced against his estate when the debtor or a creditor makes a petition to this effect. A debtor is insolvent when he is unable to meet his liabilities as and when they fall due, unless such inability is deemed to be only temporary.

Insolvency is generally deemed to exist where

- the debtor admits to being insolvent,
- restructuring proceedings have been commenced against the debtor,
- the debtor has suspended his payments; or
- it has not been possible by levying of execution in the course of the last three months prior to the bankruptcy court's receipt of the petition for bankruptcy to obtain coverage from the debtor.

3. How is a debtor’s insolvency officially declared?

A creditor can file a petition for bankruptcy at one of the 24 City Court’s divisions for bankruptcy (Skifteretten) in Denmark. I list is accessible a at www.domstol.dk/selvbetjening/find-ret/.

The creditors application must state the circumstances on which the petition is based and the petition must be filed in two copies. The bankruptcy court will immediately serve notice of the petition on the debtor and will at the same time, giving at least one day's notice, summon the creditor and the debtor in question to a meeting in the bankruptcy court, which will to the extent possible be held no later than three days after receipt of the petition for bankruptcy.

The bankruptcy court may attach importance to the debtor's absence or failure to provide adequate answers to the questions of the bankruptcy court as evidence of the correctness of the creditors' allegations. Where in special cases the bankruptcy court finds that it is unable to decide on the issue of bankruptcy without the presence of the debtor, the court may ask for police assistance to secure the debtor's presence.

The issue of a bankruptcy order is subject to the party filing the petition providing security for the costs incidental to administering the estate. These costs are normally estimated to be approximately EUR 4.000.

The bankruptcy Court (Skifteretten) issues the bankruptcy order. After the end of the day on which the bankruptcy notice was published in the Danish Law Gazette, the debtor's dispossession is effective against everybody. Until then, the dispossession is effective only against anyone who knew or should have known of the bankruptcy.

4. Where is the declaration of insolvency published? Are there online-registers?

The bankruptcy order is officially published on www.statstidende.dk. The order will also be published in the Company Register CVR on www.cvr.dk.

5. Which different type of insolvency / liquidation proceedings do exist?

There is only one type of insolvency / liquidation proceeding, i.e. “konkursbehandling” in accordance with the Bankruptcy Act No. 11 2014-01-06 as of January 1, 2020.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

There are two relevant insolvency proceeding apart from a genuine insolvency / liquidation proceeding:

a) a restructuring process (“rekonstruktion”) that must contain at least a compulsory composition or a business transfer,

b) an order for debt rescheduling (“gældsanering”) that may call for cancellation or reduction of the debtor's debt. In connection with a reduction of the debt, a decision may be made for extension of payment or payment by instalments of the part of the remaining debt to remain.

5.2. Please indicate for each of these proceedings

- if the proceeding is court supervised

Both a restructuring process (“rekonstruktion”) and an order for debt rescheduling (“gældsanering”) are court supervised.

Restructuring proceedings will be commenced against an insolvent debtor when petitioned by the debtor or a creditor. Where the petition for restructuring proceedings is filed by a creditor and the debtor has consented to the petition, the bankruptcy court may commence restructuring proceedings immediately. Where the debtor has not consented, the bankruptcy court will convene the debtor to a meeting in the bankruptcy court where the petition will be considered. The whole restructuring process is court supervised.

The restructuring proposal adopted is not valid until ratified by the bankruptcy court.

An order for debt rescheduling can be issued by the bankruptcy court on the petition of a debtor where the debtor proves that he is not able, and in the years to come has no prospects of becoming able, to meet his debt obligations. Further, it must be assumed that debt rescheduling will lead to a permanent improvement of the debtor's financial situation.

The bankruptcy court will convene the debtor to a meeting. At this meeting, the bankruptcy court will require more detailed information from the debtor regarding the debtor's affairs as to whether or not debt rescheduling proceedings should to be commenced. Debt rescheduling proceedings will commence when a decision to this effect is made by the bankruptcy court.

The debt rescheduling proceedings will be considered completed when the time limit for appeal of the bankruptcy court's decision has lapsed.

- if the opening of the proceeding is published

When commencing restructuring proceedings, the bankruptcy court will appoint a restructuring administrator and an accountant for the debtor. The bankruptcy court will also schedule a meeting with the creditors. This meeting must be held no later than four weeks after commencement of the restructuring proceedings. The bankruptcy court will publish a notice in the Danish Law Gazette convening the creditors to the meeting. If the debtor is an association registered with the Companies Register www.statstidende.dk the restructuring administrator must immediately register a notice convening the meeting in the Company Register’s public system www.cvr.dk.

This notice must be accompanied by the debtor's most recent annual report or relevant extracts thereof. The notice must contain:

- information about the debtor's most important assets and liabilities and a list of creditors,
- information about the debtor's accounting,
- an explanation of the reasons for and the purpose of the restructuring proceedings
- and information about the time of the meeting scheduled with the creditors.

Immediately after the commencement of the debt rescheduling proceedings a notice to the creditors must be issued. When issuing the notice to the creditors, the bankruptcy court will publish this in the Danish Law Gazette www.statstidende.dk.

The notice must include:

- the debtor's name, address, date of birth as well as the name and address of any personally owned undertaking,
- a request to parties having a claim against the debtor to prove such claim within eight weeks from the publication of the notice,
- a person to whom such claim must be proved,
- and the legal effects of failing to prove claims in due time.

Copies of the notice will be sent immediately to all creditors who the bankruptcy court is aware of. The bankruptcy court may determine that this notice to the creditors must also be published in local or commonly read papers.

- which is the purpose of the proceeding

A restructuring proceeding may take the form of a percentage reduction of claims or lapse of the claims against the debtor. It may also entail a postponement of payments and the debtor's property being distributed among the creditors. Creditors must be treated equally, unless they consent to la ess favorable treatment.

A business transfer may be the transfer of ownership of the debtor's going concern or part thereof maintaining the businesses identity and preserving an economic activity.

A debt rescheduling proceeding has the purpose of recreating a person’s economical future by reducing his or her debt burden.

- if payments made in the framework of such proceeding will be revoked or not in case of future insolvency

Payments made in the frameworks of the proceedings mentioned above cannot be revoked in case of a later insolvency.

6. What powers do the debtor/the debtor’s management and the insolvency administrator have, respectively?

When the bankruptcy order is issued the debtor will lose his right to transfer or abandon his property, to accept payments and other services rendered, to accept terminations, complaints and similar declarations, to incur debts or to deal in any other way with his property with binding effect on the estate.

If the debtor is a company the company’s director immediately loose their powers to act on behalf of the company.

Immediately after the bankruptcy order has been issued, the bankruptcy court after having consulted with the creditors will appoint one or more administrators present in court. The sole

power of managing the bankruptcy estate will be with the administrator. The bankruptcy court may set up a creditors' committee if deemed necessary.

Where bankruptcy proceedings are commenced against a public limited company, a private limited company, a commercial foundation or a commercial enterprise the bankruptcy court will notify the Danish Company Register thereof.

In performing his duties, the administrator will manage the interests of the estate, safeguard the assets of the estate and take the measures necessary to prevent unauthorized transactions involving the assets. The administrator may at the expense of the estate engage required expert assistance to register and possibly value the assets of the estate.

Where a creditors' committee has been set up, the administrator must notify the committee of all important transactions and contemplated transactions of material significance, unless these transactions cannot be postponed.

Where the administrator finds that the information available constitutes grounds for investigations by the police the administrator must notify the police thereof.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim

There are no formal requirements for an individual filing a claim.

8. What is required for a claim to be filed ?

( ) Submitted to administrator - Declaration sent via certified mail

(x) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

When publishing the bankruptcy notice the bankruptcy court must within four weeks call upon all parties having a claim against the debtor to prove such claim with the administrator. The notice may state that claims proved in the course of prior restructuring proceedings, voluntary liquidation proceedings, debt rescheduling or other debt arrangement will be taken into consideration without a repeated proof of claim.

Filing the claim after the four weeks period does not preclude the claim from being considered. The claim will first be considered precluded when the final accounts of all assets and claims have been approved, which is normally in the very late stage of the proceedings.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

(x) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

(x) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

( ) Translated to the State's official language

(x) English is sufficient

( ) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

The assets of the estate are applied to satisfy claims against the debtor at the time of issue of the bankruptcy order plus the income tax claims according to the Corporation Tax Act (selskabsskatteloven) and the Taxation of Foundations Act (fondsbeskatningsloven) in relation to accounting periods after the time of issue of the bankruptcy order.

A retention of title clause will normally not be respected in a Danish bankruptcy estate! A retention of title has no effect if the goods delivered are sold to for the purpose of resale. A retention of title clause is only valid and respected if the parties have entered into a retention of title agreement before or (at the latest) on delivery of the goods, the goods in question can be adequately identified and the goods are intended to stay with the buyer (i.e. a machine intended for production).

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

The ranking of the claims is as follows:

To be paid in equal shares prior to all other debts:

- Costs incidental to the commencement of the bankruptcy proceedings.
- Costs incidental to the administration of the estate.
- Debt incurred by the estate in the course of its administration except for income tax claims payable by the debtor.

To be paid subsequently in equal shares:

- Reasonable costs incidental to attempting to procure a total solution in respect of the debtor's financial affairs by means of restructuring, winding up, composition or any other way.
- Other debt incurred by the debtor after the date of filing the application for bankruptcy with consent of a restructuring administrator appointed by the bankruptcy court.
- Reasonable costs incidental to commenced solvent liquidation of a public limited company or private limited company
- Court fees related to the bankruptcy proceedings

To be paid subsequently in equal shares:

- Claims for wages and other remuneration for work performed in the debtor's service which have fallen due six months prior to the date of filing the application for bankruptcy and until the date of the bankruptcy order.
- Claims for damages for interruption of the employment.
- Claims for holiday allowance.
- Claims for accrued holiday pay of the Employees' Holiday Pay Fund.

  To be paid subsequently in equal shares:

- A number of specified duties to the Danish state.

  To be paid subsequently in equal shares:

- All other claims, apart for interest claim accrued during the proceedings.

  These are the claims normally deriving from typical business relations.

15. What effect do insolvency proceeding have on enforcement proceedings brought by individual creditors?

After the issue of the bankruptcy order, execution or attachment may not be levied against property comprised by the bankruptcy.

A party having a lien on the property of the estate may - notwithstanding the bankruptcy - levy execution against the property comprised and seek satisfaction therein.

Attachment ("arrest") levied prior to the bankruptcy will lapse.

16. What effect do insolvency proceedings have on pending lawsuits?

The estate may take the place of the debtor in pending proceedings.

Where during pending legal proceedings information is given that bankruptcy proceedings have been initiated against the plaintiff the proceedings will be stayed and the administrator and the creditors' committee, if any, will be notified for taking decision whether to abandon or continue the proceedings.

17. What effect do insolvency proceedings have on current contracts?

The estate may become a party to a bilateral agreement entered into by the debtor. The contracting party is entitled to demand that the estate decides - without undue delay - whether the estate wants to become a party to the agreement.

Where the estate becomes a party to the agreement, it will assume the rights and duties of the debtor.

Where an agreement to which the estate has become a party is related to the delivery of goods or to providing continuing services to the debtor, the estate is entitled to terminate the agreement for convenience at one month's notice. The contracting party is then entitled to claim damages for any loss incurred due to the agreement being terminated at a shortened notice.

The contracting party under a bilateral agreement which at the commencement of the bankruptcy has not been yet fulfilled by the debtor, may withhold the provision of its service or, where the service has been dispatched to the place of delivery, prevent the surrender thereof to the estate until security for the proper execution of the consideration is provided. This applies irrespective of whether the time of performance of the service has already arrived.

18. Under which conditions may set-offs be invoked?

A party having a claim against the debtor, even though the claim has not yet fallen due, may use the full claim in set-off against a claim owed to the debtor at the time, unless such set-off was prevented due to the nature of the claims.

A claim against the debtor acquired from a third party through transfer or legal enforcement later than three months prior to the day of filing the application for bankruptcy may not be used in set-off against a claim held by the debtor. This also applies where acquisition has taken place at an earlier time and the acquirer should have realized that the debtor was insolvent.

Set-off may not be effected if the debtor's claim against the creditor has been acquired under such circumstances that the acquisition in connection with set-off is comparable to a voidable payment.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Gifts executed later than six months prior to the date of filing the application for bankruptcy may be avoided. Gifts extended earlier than this but later than one year prior to the date of filing the application for bankruptcy may be avoided, unless it is proven that the debtor was not insolvent at that time. This rule also applies to gifts to persons closely related to the debtor if the gift is extended later than two years prior to the date of filing the application for bankruptcy.

Where the debtor has paid amounts in favor of a person to which he has close relations later than six months prior to the date of filing the application for bankruptcy as wages or other remuneration for work which exceed what is reasonable considering the work performed for such payment may be avoided. This rule also applies to amounts earned earlier than this but later than two years prior to the reference date unless it is proven that the debtor was not insolvent as a consequence of the payment.

Payments of debt effected later than three months prior to the date of filing the application for bankruptcy may be avoided where such payment has been effected by unusual means of payment, before the due date for payment or with amounts which have substantially impaired the debtor's ability to pay his debts provided that such payment was not as ordinary under the circumstances.

Charges or other securities not granted to the creditor at the establishment of the debt or not secured against legal enforcement without undue delay after the establishment of the debt may be avoided if the act of securing the right was effected later than three months prior to the date of filing the application for bankruptcy.

In relation to a floating charge that has been registered later than three months prior to the date of filing the application for bankruptcy, the increase of the charge which takes place when assets later than three months prior to the date of filing the application for bankruptcy are included in the charge may be avoided, unless the increase appeared ordinary.

Execution levied against the debtor later than three months prior to the date of filing the application for bankruptcy is without legal effect against the estate. This also applies where the right has been transferred to a third party.

Payments of debt effected after the date of filing the application for bankruptcy may be avoided, unless the debt falls within the scope of the rules on the order of priority of creditors, unless the payment was necessary in order to avert losses, or the favorized person neither knew nor should have known the circumstances forming the basis for the bankruptcy.

Transactions whereby the debtor fraudulently prefers one creditor or whereby the debtor's property is withheld from creditors, or the debtor's debts are increased to the detriment of the

creditors may be avoided if the debtor was or became insolvent as a consequence of the transaction and the preferred party knew or should have known of the debtor's insolvency and the circumstances causing the transaction to be fraudulent.

Avoidance proceedings may be commenced until 12 months after the date of the bankruptcy order.

Proceedings may furthermore be commenced within six months of the time at which the administrator become capable of raising such claim.

20. What are the rules of the distribution of proceeds?

Where it becomes evident in the course of the administration of the estate that the security provided is insufficient to cover additional costs incidental to the administration of the estate and where the othervfunds of the estate are insufficient to cover such costs, the estate will be wound up as soon as possible at a creditors' meeting.

Where after the expiry of the time limit within which claims must be filed the debtor produces consent from all creditors or proof that all creditors have been satisfied, the estate will be wound up immediately and its assets will be released to the debtor less costs incidental to the administration of the estate.

Pre-preferential claims will be paid as soon as possible. Preferential claims will be paid once the claims have been examined. When these claims have been paid or security for such claims has been provided, the administrator may effect partial distribution to the other creditors.

Dividend is also paid to creditors holding a charge or other security on the debtor's property and who are to be satisfied in the administration of the estate.

Dividends are paid out without regard to the due date of the claim.

21. What are the conditions for and the effects of closure of insolvency proceedings?

The bankruptcy court may determine that claims yielding only insignificant dividend will be disregarded in the distribution.

Dividend amounts which remain uncollected one year after the distribution will accrue to the Danish Treasury.

Funds which after the estate has been wound up are comprised by the assets of the estate will be distributed among the creditors in accordance with the distribution already effected.

The final accounts are produced by the administrator to the bankruptcy court. A creditors' meeting is only convened if deemed necessary by the bankruptcy court.

The bankruptcy court will publish a notice of the winding up of the estate in the Danish Law Gazette. Where a public limited company, a private limited company, a commercial foundation or a commercial enterprise has been subject to bankruptcy proceedings, the bankruptcy court will notify the Company Register of the winding up of the estate.

Creditors maintain their rights against the debtor in respect of the part of the claim which remains uncovered after the distribution of dividend.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Following a petition from the administrator a restraint may be imposed on a person who has participated in the management of the debtor’s activities less than one year before the date of filing the application for bankruptcy, if the person in question is unfit to participate in the management of commercial activities due to grossly irresponsible business conduct.

Unless criminal activities have been conducted the insolvency or liquidation itself does not lead to any criminal consequences.

23. Are there any special issues to be mentioned for your country?

Denmark is no party of the EU-Regulation 2015/848 of the European Rarliament and of the Council of 20th May 2015 on insolvency proceedings. This means that EU-Law is not applicable in relation to insolvency proceedings in Denmark.

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Insolvency and Bankruptcy Proceedings in Europe

ENGLAND AND WALES

Introduction

An individual or any corporate organisation is considered Insolvent if they are unable to pay their debts as they fall due. This basic test applies to all insolvency proceedings in England and Wales.

1. Who may Insolvency proceeding be brought against?

Insolvency Proceedings may be brought against any:

- Limited Company (Ltd Co)
- Public Limited Company (PLC)
- Limited Liability Partnership (LLP)
- A Partnership
- An individual.

The nature of insolvency proceedings differs depending on how the corporate organisation is incorporated and if the debtor is a person.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Any individual or corporate body is insolvent if they are unable to pay their debts as they fall due.

A Creditor of the insolvent person or corporation can petition the court for an Order that the debtor be declared insolvent.

An Individual can ask the court to make a Bankruptcy Order against himself. This is a simple process carried out online through the Court Service website. The individual needs to prove to the satisfaction of the Court that he is insolvent and has debts and liabilities which he cannot pay as they fall due for payment.

A Corporate body can also ask the court to declare it is insolvent, if all the Partners or Company's members agree, they can make a formal resolution to put the Company into Partnership or Members Voluntary Liquidation.

3. How is a debtor's insolvency officially declared?

A formal Order is made by the Court declaring the insolvency.

4. Where is the declaration of Insolvency published? Are there online registers?

The fact that an individual has been made bankrupt will appear on the Individual Insolvency Register. This can be accessed online at: www.insolvencydirect.bis.gov.uk/eiir/

The Insolvency of a registered Company or Partnership will be advertised in the London Gazette and will also be recorded at Companies House which can be accessed at: https://beta.companieshouse.gov.uk/

5. Which different type of insolvency/liquidation proceedings do exist?

An individual will be made bankrupt if he is insolvent.

There are a number of different forms of proceedings for corporate bodies. These include formal Members Voluntary Liquidation and Creditors Compulsory Liquidation. In both cases a Liquidator is appointed to the Company and will dispose of all the assets of the company in order to distribute the proceeds to the creditors. The company will cease trading and once the Liquidator has completed his tasks, the company will be dissolved.

5.1. Which types of pre-insolvency / hybrid/ restructuring proceedings exist?

5.2. Please indicate for each of these proceedings if the proceedings are court supervised; if the opening of the proceeding is published; which is the purpose of the proceeding and if the payments made in the framework of such proceeding will be revoked or not in case of future insolvency.

Individuals

An insolvent individual may avoid formal bankruptcy by entering into an Individual Voluntary Arrangement with his creditors. This is a formal process whereby creditors agree to allow the individual to make regular payments into a scheme from which they receive a dividend. The Scheme is supervised and managed by an Insolvency Practitioner, who has the power to end the Arrangement and petition for the debtor's bankruptcy if he does not adhere to the terms and requirements of the Arrangement.

These Arrangements will not be supervised by the Court but by an Insolvency Practitioner who is required to Report to creditors annually on the progress of the Arrangement. The existence of the Arrangement is recorded on the Individual Insolvency Register: www.insolvencydirect.bis.gov.uk/eiir/

The purpose of such an arrangement is to allow the debtor the freedom to continue without the restriction and implications that follow when a Bankruptcy Order is made. No creditor may take legal action or enforcement proceedings against the debtor while the Arrangement is in force. This protects the debtor and allows him to pay an agreed sum into the Scheme each month for a fixed period. Any monies paid into the Arrangement will be protected from any revocation or reclaim in any subsequent Bankruptcy, so the creditors will be entitled to retain any sums they receive.

Corporate entities

a. Company Voluntary Arrangement: A Company or Limited Liability Partnership may also enter into a Voluntary Arrangement with its creditors. The process and basic rules are the same as those applying in the case of an individual as described above.

b. Administration: if a major creditor has security for the debt in the form of a Charge over any asset of the Company it is normal for that charge to include a provision entitling the creditor to appoint an Administrator to the Company. The Administrator will take control of the Company's assets, sell or otherwise dispose of them and then distribute the sale proceeds to the appointing creditor. During this process no other creditor may take legal or enforcement action against the Company without the permission of the court. Once the Administrator has completed his task, the Company is generally left with no assets and will go into Liquidation; if it does retain the ability to continue to trade, it can recommence trading. The appointment of the Administrator will be recorded at Companies House and will be monitored by the Court. The purpose is solely to allow the secured creditor to recover payment of monies due to him. Any payments made to them will be protected and not subject to any reclaim or revocation in any future insolvency.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The debtor has no power over his/its financial estate once a Trustee in Bankruptcy; Administrator or Liquidator has been appointed. The Insolvency Practitioner appointed takes full control of the financial estate and has wide ranging powers, according to the Insolvency Act 1986. These include the power to sell, hire, rent or otherwise dispose of the assets of the insolvent for the benefit of the creditors; to investigate the financial dealings of the insolvent in the period leading up to the insolvency and to overturn any transactions which were designed to or did put assets beyond the reach of creditors; transactions made at undervalue and disposal of assets to associates of the insolvent.

7. Who may register a claim in case of a debtor's insolvency/ liquidation?

Any Creditor may register a claim by completing a Proof of Debt form and sending it to the Insolvency Practitioner appointed. This may be done by the Creditor or by any lawyer or other duly appointed Agent of the Creditor

8. What is required for a claim to be filed?

The completed Proof of Debt will contain basic information about the debt due. If the Insolvency Practitioner requires any further information he will request that of the creditor. The court is not involved in this process. Proofs of Debt can be filed by email or post.

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim forever?

There is no fixed deadline but the Insolvency Practitioner will require completed Proofs of Debt before he can complete and close the estate of the Debtor. If a creditor does not submit the completed form before the Practitioner concludes the estate, the creditor will lose the opportunity of receiving any payment from the estate.

10. A claim must be lodged in English.

11. Written proof of claim needs to be filed…

In the form of a completed Proof of Debt. Further documentation need only be filed if requested by the Insolvency Practitioner.

12. Documents concerning the claim must be …

In English. Copies of the original documents are sufficient if accompanied by an English translation.

13. Which type of claims can be lodged? How do you treat retention of title?

Monetary claims may be lodged. Retention of Title claims must be made in writing to the Insolvency Practitioner enclosing a copy of the contractual document proving the right to the goods /property.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

The secured creditors will have priority over all other creditors. Then preferential creditors which include employees owed wages and arrears of holiday pay. All other creditors, including tax claims and trade creditors, are unsecured and rank last in order of priority.

15. What effect does insolvency proceedings have on enforcement proceedings brought by individual creditors?

The effect of any Insolvency procedure is to prevent any legal or enforcement proceedings from being taken or continued against the debtor without the permission of the court.

16. What effect does insolvency proceeding have on pending lawsuits?

The proceedings are automatically stayed and cannot continue without the permission of the court.

17. What effect does insolvency proceeding have on current contracts?

In most cases, the Contract itself will provide that it terminates on the insolvency of the debtor. As the Liquidator will have control of the Company, only he can consent to the contract continuing.

18. Under which conditions may set-offs be invoked?

Set off in Insolvency cases must be dealt with Under Rule 14.25 **Insolvency** Rules (IR) 2016, an account must be taken of what is due from the debtor and the creditor to each other in respect of their mutual dealings. The sums due from one must be **set off** against the sums due from the other.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceedings?

These transactions will be the subject of a review by the Liquidator of a Company or a Trustee in Bankruptcy and may be declared void, or set aside. In these cases the factual circumstances will be reviewed and if there is found to be any:

- Activity putting assets out of reach of creditors
- Transactions at undervalue
- Fraudulent transactions
- Transactions preferring one creditor over another

These will be reviewed by the Liquidator who may seek an Order from the Court reversing the transaction and for the company's directors to personally pay to the Liquidator any monies lost as a result of the transaction.

20. What are the rules of the distribution of proceeds?

Once the costs of the Liquidator, and any court fees are paid, the proceeds are distributed to pay in full all secured creditors, then the preferential creditors followed by the unsecured creditors.

21. What are the conditions for and the effects of closure of insolvency proceedings?

Once all assets have been disposed of and monies distributed to creditors the Insolvency Practitioner will discharge the individual from Bankruptcy; the insolvent Company will be dissolved and cease to exist.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

If a company director is found to have committed breaches of his obligations under the Companies Act legislation he will be reported to the Directors Disqualification Unit for investigation and he may be disqualified from acting as a company director for a period of years.

A liquidator has the power to take civil action against the Director for any losses arising out of a reviewable transaction made in the 2 years preceding the insolvency.

23. Are there any special issues to be mentioned for your country?

None.

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Insolvency and bankruptcy proceedings in Europe

FRANCE

Introduction

It is almost impossible to present the French bankruptcy system in the context of such a short questionnaire without being incomplete and inaccurate, given that this is a very complex and detailed area of the law on which thousands and thousands pages were written by legal academics and practitioners. Hence, the below answers are only high level information which is not legal advice.

1. Who may insolvency proceedings be brought against?

Companies (of commercial or civil nature), traders, sole proprietors, farmers, craftsmen.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Difficult to give a general answer as it depends on the type of pre-insolvency/ insolvency/reorganization/bankruptcy proceedings under consideration. There are indeed seven such proceedings (*procédure de sauvegarde, sauvegarde accélérée, sauvegarde financière accélérée, redressement judiciaire, liquidation judiciaire, mandat ad hoc,* and *conciliation*).

For some of those proceedings (*redressement judiciaire* and *liquidation judiciaire*) the debtor needs to be in a state of cessation of payments (i.e. insolvent, that is basically when current assets cannot meet current liabilities) for more than 45 days. For other proceedings, this is the opposite situation as the debtor must not be in a state of cessation of payments (sometimes for more than 45 days) but encounter difficulties (e.g. *procédure de sauvegarde, sauvegarde accélérée, sauvegarde financière accélérée, mandat ad hoc,* and *conciliation*).

Depending on the type of proceedings under consideration, the debtor, the creditors, and the public prosecutor may ask for the opening of those proceedings.

3. How is a debtor's insolvency officially declared?

It is the court that declares the debtor's insolvency.

4. Where is the declaration of insolvency published? Are there online-registers?

Insolvency is published at the trade registry (*Registre du Commerce et des Sociétés, known as "RCS"*) and in a legal gazette named *BODACC*, both being accessible online. However some proceedings are not advertised and are confidential (e.g. *mandat ad hoc* and *conciliation*).

5. Which different type of insolvency / liquidation proceedings do exist?

There are seven types of pre-insolvency/ insolvency/reorganization/bankruptcy/liquidation proceedings (procédure de sauvegarde, sauvegarde accélérée, sauvegarde financière accélérée, redressement judiciaire, liquidation judiciaire, mandat ad hoc, and conciliation).

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

There are six types of pre-insolvency/ insolvency/reorganization proceedings (mandat ad hoc, conciliation, redressement judiciaire, procédure de sauvegarde, sauvegarde accélérée, and

sauvegarde financière accélérée). The last two proceedings (sauvegarde accélérée and sauvegarde financière accélérée) are pre-packaged proceedings.

The last one (*liquidation judiciaire*) is a pure bankruptcy/liquidation procedure, which is more or less the French equivalent of the US Chapter 7 (i.e. in case of cessation for more than 45 days and when the company has ceased trading or when there is no possibility to rescue the company, the court appoints a trustee in bankruptcy whose task is to realize the debtor's assets and to distribute the proceeds thereof to the creditors as per their legal ranking).

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised.**
  All proceedings are more or less court supervised but in some instances the court may have a very, very light role, such as appointing a court-agent (*mandat ad hoc*) and possibly approving or recording the agreement between debtor and creditors (*conciliation*).
- **if the opening of the proceeding is published**
  Yes save for *mandat ad hoc* and *conciliation*, which are confidential proceedings.
- **what is the purpose of the proceeding**
  ***Mandat ad hoc*:** confidential out of court pre-insolvency proceedings under the supervision of a court-appointed agent when debtor is experiencing difficulties and aimed at facilitating work-outs and seeking arrangements with the main creditors. There is almost no regulation for this procedure which is really flexible.

  ***Conciliation*:** basics are similar to those of the *mandat ad hoc* but it is more regulated and creditors benefit from a greater protection against possible clawback requests. Besides, new money injected in the debtor's company benefits from a super-privilege in case of future insolvency.

  ***Procédure de sauvegarde*:** court-driven procedure, with the appointment of trustees, which is applicable to solvent companies facing difficulties which cannot be overcome and aimed at restructuring the company at an early stage under a safeguard plan adopted by the court and creditors.

  ***Sauvegarde accélérée* and *sauvegarde financière accélérée*:** these are prepackaged reorganization procedures in case where the above *conciliation* procedure has failed (i.e. the consent of all creditors which were a party to that procedure was not obtained) and allowing the debtor to be restructured in a short-time frame, with court-appointed trustees, as per a restructuring plan to be approved by the court and adopted by a two-thirds majority within creditor classes.

  ***Redressement judiciaire*:** this is a court-driven reorganization procedure, with the appointment of trustees, which is applicable when the company is in a state of cessation of payments for more than 45 days. The aim of this procedure is to safeguard the company's activities, protect jobs and repay creditors. A rescue plan is to be adopted by the court or if not possible the company is adjudicated into *liquidation judiciaire* (more or less the French equivalent of the US Chapter 7).
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  See answer under question 19 below.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

It depends on the decision of the court opening insolvency proceedings and/or the type of proceedings under consideration. It may range from no discharge of the debtor's management (*mandat ad hoc* and *conciliation*) to mere assistance or supervision by the

administrator of the debtor's affairs and, in rarer cases, taking over by the administrator of the management, for other proceedings. For *liquidation judiciaire*, the management is discharged and the court-appointed liquidator takes over.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

(X) Other requirements for an individual filing a claim? Power of attorney.

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

(X) Submitted to creditors' representative appointed by the court - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

Creditors must file their claim with the creditors' representative within 2 months (4 months for creditors located outside mainland France) as from the date of advertising of the insolvency judgment in the legal gazette, *BODACC*. Under strict conditions, the deadline for the filing may be extended with leave of court (*relevé de forclusion*). If the claim is not timely filed or does not benefit from a *relevé de forclusion*, then the creditor will not be entitled to share the proceeds to be distributed to the creditors, if any.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceedings

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(X) Translated into the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

(X) Copies of the original documents are sufficient, but creditor needs to be ready to supply original documents upon request of the creditors' representative or the court.

13. Which type of claims can be lodged? How do you treat retention of title?

All secured and unsecured claims are to be lodged with the creditors' representative (not employees' claims). Claims for retention of title must also be lodged and it will be up to the court in case of dispute with the trustee to rule on this issue.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

This is a too complex area which cannot be simplified. Basically, secured claims and privileged claims (e.g. tax, social security, new money privilege, etc.) as well as eligible claims incurred after the date of the opening judgment, rank before unsecured claims.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

It depends on the type of proceedings here again.

In a nutshell, some insolvency proceedings stay the actions of creditors aimed at claiming/enforcing payment against debtor, or seeking to terminate a contract for default of payment.

16. What effect does insolvency proceeding have on pending lawsuits?

Depending on the type of proceeding, pending lawsuits are stayed until the creditor files proof of claims with the creditors' representative and resume the lawsuit which can then only lead to setting the claim which will be paid, if any, as per the provisions of the rescue plan or as per the ranking of the creditor and if there are available proceeds to that effect.

17. What effect does insolvency proceeding have on current contracts?

Depending on the type of procedure, contracts are not terminated due to insolvency, notwithstanding any provision to that effect stipulated in the contract. Basically it will be up to the administrator to decide to pursue the contract or not.

18. Under which conditions may set-offs be invoked?

Depending on the type of procedure, set off will only apply between mutual and connected claims.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

In the context of *redressement judiciaire* and *liquidation judiciaire* proceedings, a certain number of transactions/payments may be voided if they have occurred during the preference period (i.e. a period of a maximum duration of 18 months ranging from the date of cessation of payments to the date of the opening judgment). In particular, all payments of a debt before its maturity date, all security interests created during the preference period and securing antecedent debts, etc. will be voided. Besides transactions and payments occurred during that period may also be voided if it is evidenced that the creditor was aware that the company was in a state of cessation of payments at the time of such payment or transaction.

20. What are the rules of the distribution of proceeds?

In a nutshell and without going into too much details, proceeds are distributed as per the provisions of the judgment adopting a rescue plan or as per the creditor's ranking in case of liquidation.

21. What are the conditions for and the effects of closure of insolvency proceedings?

Proceedings may be closed for different reasons depending on the type of insolvency proceedings under consideration.

It may be in case of insufficiency of assets to repay the debts, or to the contrary because all liabilities have been repaid, or because the difficulties having led to the opening of the proceedings have disappeared, or in case of arrangement with the creditors, or as per a judgment rendered by the court adopting a bankruptcy/rescue plan, or approving the agreement between debtor and creditors, etc.

When closed, some of these proceedings may be reopened but only for very limited reasons;

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Yes and this is in particular the area of directors' liabilities for mismanagement.

Parent companies may also under specific circumstances be held liable for the debts of the bankrupt company in relation to employees in case of de facto co-employment.

Proceedings may also be extended to other companies (e.g. within a group of companies) in case where the bankrupt company was fictitious or the assets of the two companies were mixed, or when there were abnormal financial streams between the companies.

23. Are there any special issues to be mentioned for your country?

No

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Insolvency and bankruptcy proceedings in Europe

GERMANY

Introduction

The law of insolvency changed completely in the year 2012. There was a new law with the name "ESUG" with similar regulations to chapter 11 in the US-insolvency law. There were a number of tools for the management and also for administrators and receivers to avoid the insolvency of a company.

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against companies and natural persons, The purpose of the procedure is to guarantee, that all creditors of the debtor get the same bankruptcy dividend, as long as there are no special security rights, which have to be recognized.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Condition for the opening of insolvency proceedings is that the debtor is not able to fulfil his financial obligations. The issue is illiquidity or overindebtedness, even if this is threatening. If this is happens, the management of a company has to file a petition to the competent court, which is the Insolvenzgericht (lower regional court). The debtor or a creditor can apply for bankruptcy.

3. How is a debtor's insolvency officially declared?

The insolvency court decides that the debtor is in bankruptcy.

4. Where is the declaration of insolvency published? Are there online-registers?

The online register is http://www.insolvenzbekanntmachungen.de. There are also a number of official and private publications.

5. Which different type of insolvency / liquidation proceedings do exist?

There is one law existing in Germany, Insolvenzordnung. It contains a number of different procedures:

- There is the ordinary insolvency procedure (Regelinsolvenzverfahren)
- Insolvency plan (§§ 217-269 InsO)
- Insolvency in self administration (§§ 270-285 InsO) (Eigenverwaltung/Schutzschirmverfahren)
- Consumer insolvency (§§ 304-314 InsO)
- Estate insolvency proceedings (§§ 315 ff.)

5.1. Which types of Pre-Insolvency / hybrid / restructuring proceedings do exist?

- Amicable settlement

It is always possible to settle liquidity problems out of court in an amicable way. The problem is, that a delayed insolvency, if such settlement fails, may lead to an ordinary insolvency and

to criminal prosecution of the acting managers. There are no time limits, but it only works out, if all creditors give their consent. CAVEAT: The management of a company has a deadline of only 3 weeks to apply for insolvency procedure after the situation of overendebtatness or liquidity (§ 15a InsO).

- Insolvency plan
- In case of an insolvency plan the debtor and/or the receiver have to forward a plan to the court. The creditors are in certain groups with different voting rights. The court can reject the plan under certain conditions and the court can give comments on the plan. If the plan is accepted by court and creditors, the plan is binding and includes the prohibition of individual enforcement measures of creditors. If the plan is fulfilled, the insolvency is finished and this will be published.
- Self administration

Restructioral proceedings are also possible with self-admistration (§§ 270 ff InO). The debtor can do the reconstruction with the help of an advisor (Sachwalter), who has certain control rights.

- Consumer insolvency
- This is a quick procedure against consumers with less than 20 creditors. Besides consumers this are other natural persons and in both cases it is possible to give them a release of debts, if they fulfil a plan to repay a part of that debt within the given time. In extreme cases the monthly payment can be next to zero. After six years the debts are gone (debt release).

5.2. Is it supervised by court?

The amicable settlement is not supervised and it is not published. The other three forms are supervised by the court, the proceeding is published and the purpose is equal payment to all creditors.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

In case of restructuring proceedings in self-administration the management of the debtor can take the decisions in accordance with the advisor (Sachwalter).

In the ordinary bankruptcy procedure and in other restructuring procedures it is the receiver (Insolvenzverwalter), who is responsible for the distribution of the estate. The receiver decides whether the business continues or whether it has to stop immediately; decides what happens to the secured creditors; decides, which pending contract will be fulfilled; decides whether new contracts are necessary for the insolvency. The receiver is liable for these decisions. There is normally a creditor's committee elected and they decide with the receiver.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

8. What is required for a claim to be filed?

( ) Submitted to receiver - Declaration sent via certified mail

(x) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

(x) other: Normally the administrator sends out forms to file the claim. A certain form is not prescribed, but it makes things easier to use these forms.

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim forever?

Basically no. The court gives in the first decision about the opening of the insolvency procedure a deadline for the registration of the claim. The receiver will send the forms to all creditors with the same deadline. The consequence of registration of a claim after the deadline is that it will not be checked in the first hearing, when all registered claims are being checked.

Nevertheless, there is always at the end of the procedure another hearing, when the delayed registrations will be checked. There is only an extra fee for the court to pay and after the termination of the insolvency a registration is excluded.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

( ) Creditor's language

Often the receiver understands English and if the business relationship was in English, it should be sufficient to make the registration in English.

11. Written proof of claim needs to be filed…

(x) Normally proof as in a court is not needed, because the debtor has the relevant invoices and proof of delivery in the company files. If the receiver objects, it is always possible, to forward more proof

( ) Only if a dispute arises

12. Documents concerning the claim must be...

(x) A translation to the State's official language is required if a dispute arises

( ) English is sufficient

(x) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

If the receiver asks for a translation, one has to provide it. If not, the claim maybe rejected.

13. Which type of claims can be lodged? How do you treat retention of title?

All claims, secured or unsecured.

Claims based on retention of title must be lodged in the same way and they get a preferred treatment: The goods delivered under retention of title maybe handed over to the creditor. There are also arrangements possible with the receiver how he can use the goods to continue the ongoing business. In such a case the receiver is liable for this new obligation.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

Basically the ranking of the creditors depends on when and how the claim came into existence:

Ordinary claims (Insolvenzforderungen) are those which came up before the opening of the insolvency procedure and which are just registered as ordinary claims.

Before these claims in the first rank are the bankruptcy claims (Masseforderungen). These are obligations created by the receiver by making new contracts with third parties. In the first rank are also the costs for the receiver and for the court.

If there is not enough bankruptcy estate to pay court and receiver, the procedure will be closed due to lack of estate.

There also secured creditors who can sort out their goods (Retention of title) or real estate (Mortgage etc.). These creditors are preferred. There is no preference for social security contributions, tax etc.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

All individual collection attempts by bailiff are not possible; it has all to be registered with the insolvency administrator.

16. What effect does insolvency proceeding have on pending lawsuits?

In the situation of the insolvency all pending litigation is discontinued. It can only be re-started by the insolvency administrator or the opposing party. The interruption is by law (§ 240 ZPO).

17. What effect does insolvency proceeding have on current contracts?

In general the administrator decides whether contracts will be fulfilled or not. If he wants to fulfil the contract, this leads to the full liability of the bankruptcy estate or, in case of a mistake, to the personal liability of the receiver.

18. Under which conditions may set-offs be invoked?

Set-offs are possible in insolvency cases, if the right to declare the set-off did already exist in the moment, when the insolvency procedure has been open. If not, the creditor would get only the small bankruptcy dividend. The decisive moment is, that the set-off was possible in the moment, when the insolvency procedure has been opened.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Payments effected prior to the opening of the insolvency proceeding by the debtor to a third party can be contested by the receiver, if they discriminate other creditors and decrease

unduly the assets of the debtor. There are various reasons for the avoidance and various time periods within the unjustified payment has been effected.

20. What are the rules of the distribution of proceeds?

The first payments will cover the costs of the procedure (Massenschulden) including court costs and the costs of the receiver and the obligations undertaken by the receiver for the bankruptcy estate. The rest will be equally distributed to the unsecured creditors.

21. What are the conditions for and the effects of closure of insolvency proceedings?

In case of the insolvency of a company all assets of the company will be sold and will be part of the bankruptcy estate to be distributed among the creditors. After the insolvency proceeding has been finished, the legal entity is erased from the commercial register and does not exist anymore.

In case of the reorganisation, the debtor continues the business and pays according to the plan. After fulfilment of the plan the claims do not exist anymore.

In case of a bankruptcy of a natural person the debtor pays the monthly payments agreed by the court and after fulfilment of the plan the creditor gets a debt release. This is after six years.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Parallel to insolvency / liquidation criminal prosecution is possible. In case of companies and their liquidation the district attorney gets automatically the file to check, whether the management committed criminal offenses, as, for example, applied to late for insolvency.

The management can also be held liable in civil procedures by creditors under the condition, that the management committed fraud against such a person.

23. Are there any special issues to be mentioned for your country?

The ESUG brought an acceleration of the insolvency cases. Larger cases are solved within a period of 3 or 4 years, smaller once can be finalized in some months.

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Insolvency and bankruptcy proceedings in Europe

GREECE

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against traders and against associations of persons with legal personality pursuing an economic objective.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

To open the proceedings, an application must be submitted by the debtor himself, by a creditor with a legal interest or by the public prosecutor at the Court of First Instance (*eisangeléas protodikón*) if there are considerations of public interest.

Conditions for opening the proceedings:

c. where a creditor has applied, the debtor must be in a state of cessation of payments;

d. where the debtor has applied, the likelihood of being unable to pay his debts will suffice.

The Court will set the date of cessation of payments, which may not be more than two years before the date of publication of the judgment. (The presiding judge of the Court may, at the request of any person having a legal interest, order any measure deemed necessary for preventing any change to the debtor's assets that would be detrimental to the creditors. Such measures will cease to apply automatically once the judgment declaring the insolvency is delivered.)

3. How is a debtor's insolvency officially declared?

With the decision declaring the insolvency, the Insolvency Court appoints the Judge rapporteur and the syndic of the insolvency and orders the sealing of the insolvency estate.

It sets a day, time and place where the creditors will convene, before the rapporteur, in a meeting for the drafting of the list of alleged creditors and to elect the creditors committee and specifies the manner of publicity. With the same decision, the insolvency Court sets a date for convening the creditors meeting to decide, based on the syndic's report, what is particularly defined in article 70. This date cannot be more than four (4) months as of the declaration of insolvency. The two meetings may coincide.

The day of the cessation of payments is specified in the decision, which cannot be more than two years from the date of the declaration of the insolvency, or, in the case of the debtor's death, more than a year before his death. In case the insolvency is declared according to article 3 paragraph 2 of the Insolvency Code (i.e. *threatened inability to fulfil his/her pecuniary obligations*), the day of the cessation of payments is considered to be the date of publication of the decision declaring the insolvency.

The Insolvency Court can, with a subsequent decision, upon the application of the syndic, the creditors committee, a creditor and anyone having a legitimate interest, alter the time of the cessation of payments. The application for altering the time for the cessation of payment is inadmissible after the verification of creditors is completed and in any case after the lapse of a year from the declaration of the insolvency.

Regarding the insolvency of general or limited liability commercial partnerships, with the same decision declaring the insolvency of the partnership, the general partners are also declared insolvent without further formalities. The insolvency of a civil law company with legal personality or of other associations with legal personality does not also result to the co-insolvency of its members.

The decision is immediately enforceable and its judicial stay is not allowed. It can be challenged with the judicial remedies of appeal and appeal in cassation that are exercised and tried under the procedure of voluntary jurisdiction (articles 741 *et seq.*CCP) and are also directed against the syndic.

4. Where is the declaration of insolvency published? Are there online-registers?

Summaries of the decisions declaring the insolvency or altering the time of the cessation of payments, as well as every other invitation or action that is provided in the present code, are published at the instigation of the syndic, the debtor or anyone else with a legitimate interest, at the Bulletin for Judicial Publications of the Lawyers Fund. The Insolvency Court can, in its discretion, order additional publications.

The decisions declaring or revoking the insolvency or that orders the opening of the conciliation procedure, ratify the conciliation agreement, declare its termination, ratify or reject the reorganization plan, annul it or orders its individual reversal or cease the operations of the insolvency and for all other cases provided in the Insolvency Code, are marked in the General Commercial Register. In every First Instance Court, at the rapporteur's office, an Insolvency Register is kept at the instigation of the secretary of insolvencies, where an entry is made of the name of the persons and in case of legal entities their name, of those who have been declared insolvent or for whom the opening of conciliation procedure has been requested. Any further action of the procedure, as well as the restitution is recorded under the name entry. An aphabetical index is also kept.

A General Register is kept at the First Instance Court of Athens, where all the above alterations for all the Country are entered. The details for the keeping of these Registers are specified with a Decision of the Minister of Justice.

The decision declaring the insolvency is registered, at the syndic's instigation, in the land register or the cadastral office, in which the debtor's rights in remover immovable property have been registered.

In case of disposals or releases of such real estate by the syndic, the Insolvency Court, upon his application, orders for that entry to be erased.

The above apply by analogy also to the registers of ships or aircrafts, over which the debtor has rights in rem, as well as to public books in which other property assets are registered by law.

5. Which different type of insolvency / liquidation proceedings do exist?

None.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

None.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

With effect from the declaration of insolvency, the debtor is automatically deprived of the right to manage, i.e. to administer and dispose of, his assets. Any act of management on the part of the debtor without consent from the administrator (*sýndikos*) will be unenforceable. The assets will be managed by the administrator.

Only in exceptional cases, which are specified by law, may the debtor undertake the management of his own assets.

The administrator appointed must be a lawyer with at least five years' experience. The administrator's work is supervised by the Court's judge-rapporteur (*eisigitís dikastís*). Some of the administrator's acts require permission from the Court dealing with the insolvency (the 'Insolvency Court', *ptocheutikó dikastírio*). The Insolvency Court serves as the ultimate supervisor responsible for directing the insolvency proceedings.

7. Who may raise a claim in the case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(x) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

Claims must be lodged in writing with the registrar of insolvencies, specifying the type, cause, date of generation, etc., within one month from the date of the publication of the judgment declaring the insolvency in the Bulletin of Judicial Notices of the Lawyers' Fund (*Deltío Dikastikón Dimosieúseon tou Tameíou Nomikón*). If the above time-limit for lodgment expires, a creditor may still lodge a notice of opposition (*anakopí*) and request that his claim be verified by the Insolvency Court.

10. A claim must/can be lodged in:

(x) the official language of the concerning State

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(x) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

All of the debtor's creditors may lodge their claims and submit their documents to the registrar of insolvencies, regardless of whether their claims are privileged or not and regardless of whether they are secured by collateral or not. The creditors included in the insolvency proceedings are those who, at the date of declaration of insolvency, have a contractual monetary claim against the debtor which has already been generated and can be pursued in Court. Any claims generated after the opening of the insolvency proceedings cannot be lodged. The administrator's court costs, the costs incurred for the management of the insolvency estate, the administrator's remuneration and any claims on the estate itself (*omadiká pistómata*) are deducted in advance, after the decision to liquidate the insolvency estate, and are satisfied before the ranking of the debtor's creditors.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

The following general privileges will be taken into account in the distribution: (i) claims resulting from all kinds of financing provided in order to keep the debtor's activity going; (ii) claims for the debtor's medical treatment and funeral expenses; (iii) claims for the provision of necessary food; (iv) claims on the part of employees in respect of their employment, lawyers' fees; (v) claims on the part of farmers; (vi) claims on the part of the Hellenic State and local authorities; (vii) claims on the part of the guarantee fund (*synengyitikó*), and the specific privileges of creditors, i.e. privileged claims over a specific movable or immovable asset of the debtor or over an amount of money. Where there are overlapping privileges in the case of proceeds from the disposal of an asset or an amount of money, the corresponding provisions of the Code of Civil Procedure apply *mutatis mutandis.*

15. What effect does insolvency proceeding have on enforcement proceedings brought by individual creditors?

Upon a declaration of insolvency, all proceedings brought by individual creditors against the debtor to satisfy or fulfil claims within the scope of the insolvency are suspended automatically, without prejudice to the provisions on secured creditors, for whom the suspension does not apply to the collateral in the insolvency estate. However, a suspension of a few months may apply to those creditors subject to certain conditions. More specifically, upon a declaration of insolvency, the following acts are prohibited; to continue enforcement, to lodge actions for performance or declaration, to continue such lawsuits, to lodge or hear appeals and to issue acts of an administrative or tax nature or to enforce them over assets of the insolvency estate.

16. What effect does insolvency proceeding have on pending lawsuits?

Any lawsuits which are pending at the date of declaration of insolvency will be continued by the administrator if the debtor is the creditor in those lawsuits. If he is the debtor, the lawsuits are suspended and the procedure for lodging and verification is followed.

Specifically, without prejudice to the provisions of article 26 of the Insolvency Code (Provisions for secured creditors), from the declaration of insolvency, all individual recovery measures of the creditors against the debtor for the satisfaction or the fulfilment of their insolvency claims are suspended *ipso jure*. Particularly, it is forbidden the opening or continuation of forced execution proceedings, a lawsuit for performance or declaration, the continuation of trials over these, the exercise or the hearing of judicial remedies, the issuance of acts of administrative or tax nature, or their execution over assets of the insolvency estate.

Actions in breach of the suspension of the above are absolutely void.

17. What effect does insolvency proceeding have on current contracts?

The current bilaterally onerous contracts at the time of declaration of insolvency, in which the debtor is a contracting party, maintain their force, unless it is provided otherwise in the Insolvency Code.

The syndic, with the rapporteur's leave, has the right to perform current contracts, substituting the creditors group in the debtor's place, and to demand performance by the counterparty. In this case the latter becomes a group creditor.

If the syndic does not exercise his right to perform within ten (10) days as of the filing of his report, the counter contracting party is entitled to set to him a reasonable deadline for the exercise of the right of option. If the syndic does not reply within the reasonable deadline set by the counter party or if he denies to perform, then the counter contracting party is entitled to withdraw from the contract and to claim damages for non performance, being satisfied as an insolvency creditor.

The syndic's right to perform or not is in relation to current bilaterally onerous agreements, for which the syndic has obtained knowledge, particularly those included in a list that the debtor has handed over to him.

18. Under which conditions may set-offs be invoked?

A declaration of insolvency does not affect a creditor's right to invoke a set-off against a counterclaim of the debtor, provided that the conditions for set-off were met before the declaration of insolvency. Any prohibition of set-off will also apply to the insolvency.

19. What are the conditions of avoidance actions against legal acts entered into prior to the opening of insolvency proceeding?

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.

Acts concluded within the suspect period are avoided by decision of the insolvency court. The avoidance action is exercised by the syndic. It may be also exercised by a creditor, if he has requested the syndic in writing to exercise same pertinent to a specific act and for a specific legal reason and the syndic did not exercise it within two (2) months from receiving the creditor's written request.

The avoidance action is directed against him or those who had taken part in the act under revocation as well as against his heirs or other universal successors or a male fide special successor.

The avoidance is not precluded on the grounds that an enforceable title has been issued for the act under revocation or that the right arising from same was acquired through enforcement.

The avoidance action is time barred with the lapse of one (1) year from the day the syndic obtained knowledge of the act and in any case after the lapse of two (2) years from the declaration of the insolvency.

Finally, regarding the payment of a negotiable instrument by the debtor within the suspect period, the avoidance action can be directed only against the issuer of a bill of exchange and first endorser of a promissory note and checks and only if these had knowledge at the time of issuance or endorsement of a negotiable instrument, respectively, that the payee of the Bill of Exchange or the issuer of the promissory note and check had ceased his payments.

20. What are the rules of the distribution of proceeds?

Once a decision to liquidate the insolvency estate has been taken, the administrator, without undue delay, draws up a distribution list and submits it to the judge-rapporteur. The latter will declare the list enforceable and have it posted at his office. The following general privileges will be taken into account in the distribution: (i) claims resulting from all kinds of financing provided in order to keep the debtor's activity going; (ii) claims for the debtor's medical treatment and funeral expenses; (iii) claims for the provision of necessary food; (iv) claims on the part of employees in respect of their employment, lawyers' fees; (v) claims on the part of farmers; (vi) claims on the part of the Hellenic State and local authorities; (vii) claims on the part of the guarantee fund (*synengyitikó*), and the specific privileges of creditors, i.e. privileged claims over a specific movable or immovable asset of the debtor or over an amount of money. Where there are overlapping privileges in the case of proceeds from the disposal of an asset or an amount of money, the corresponding provisions of the Code of Civil Procedure apply *mutatis mutandis.*

21. What are the conditions for and the effects of closure of insolvency proceedings?

To open the proceedings, an application must be submitted by the debtor himself, by a creditor with a legal interest, or by the public prosecutor at the Court of First Instance (*eisangeléas protodikón*) if there are considerations of public interest. Conditions for opening the proceedings: (a) where a creditor has applied, the debtor must be in a state of cessation of payments; (b) where the debtor has applied, the likelihood of being unable to pay his debts will suffice. The Court will set the date of cessation of payments, which may not be more than two years before the date of publication of the judgment. The presiding judge of the Court may, at the request of any person having a legal interest, order any measure deemed necessary for preventing any change to the debtor's assets that would be detrimental to the creditors. Such measures will cease to apply automatically once the judgment declaring the insolvency is delivered.

A reorganisation plan can be submitted to the Insolvency Court by the debtor and the administrator. It must include information on the debtor's financial standing and the proposed satisfaction of creditors, a description of the measures to be taken, such as organisational changes and business plans, the formation of rights and the overall ranking of each creditor,

etc. The Insolvency Court will automatically carry out a preliminary examination of the plan within 20 days of submission, and may reject it on the specific grounds set out in the law. If the Court does not reject the plan it sets a time-limit of not less than three months for the creditors to accept it or not, and a date on which the creditors are to meet. The deliberation and vote concerning the plan take place in the presence of the judge-rapporteur. A special majority is required to accept the plan. Upon acceptance of the reorganisation plan by the creditors, it is submitted to the Court for ratification. After a final judgment is rendered on the approval of the plan, it becomes binding on all creditors, irrespective of their ranking and of whether they have, or have not, lodged their claims. The insolvency proceedings are terminated. Creditors may bring proceedings individually.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

The Insolvency Court, in assessing the causes and circumstances of the insolvency, rules that the debtor is excusable if he is of good faith and the insolvency is not due to his malicious acts. There may not be declared excusable those, who are convicted of any of the acts of bankruptcy in articles 171 and 172 or for any of the felonious acts of theft, fraud, embezzlement and forgery of the Penal Code. If there is a pending criminal prosecution for any of those acts, the Insolvency Court may defer the decision until the final termination of the criminal proceedings. The decision shall be revoked if a change of circumstances justifying the revocation occurs. After the accounting of the syndic, the rapporteur submits the relevant report of the meeting of creditors to the Insolvency Court, as well as his own report on the circumstances of insolvency. If the insolvency was closed by decision declaring the cessation of works, under paragraph 1 of article 166, the Insolvency Court, considering the circumstances of insolvency and having heard the syndic and the committee of creditors may decide, with the same decision, that the debtor is excusable. If the insolvency was closed in accordance with paragraph 3 of article 166, the Insolvency Court after a relevant report of the rapporteur and after hearing the syndic and the committee of creditors may decide that the debtor is excusable. If the debtor is declared excusable, he may not be personally detained by the insolvency creditors, unless special laws provide otherwise. The provision of the decision declaring the debtor excusable is noted in the Register of Insolvencies as well as in the General Commercial Register.

23. Are there any special issues to be mentioned for your country?

No.

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Insolvency and bankruptcy proceedings in Europe

HUNGARY

First of all, we must note that given the intended extent of this questionnaire, it is impossible to provide a comprehensive and detailed description of the Hungarian insolvency law by answering these questions, therefore we intend to answer the questions of this questionnaire only in general, avoiding to go into the very details of the topic. Having respect to this, our answers to this questionnaire shall not be considered as a legal advice, but only a general introduction to the Hungarian legislation concerning the topic of insolvency. We do not take any responsibility for any inaccuracy of our answers that may arise due to the fact that the extent hereof does not make it possible to provide fully detailed information.

1. Who may insolvency proceedings be brought against?

The core law regulating the field of insolvency in Hungary is Act XLIX of 1991 on bankruptcy proceedings and insolvency proceedings (hereinafter: **Bankruptcy Act**). In terms of the Bankruptcy Act, insolvency procedures – of course, in case the conditions set forth by the Bankruptcy Act are met - might be brought against economic operators ("*gazdálkodó szervezet*"), which category is defined by the Bankruptcy Act as follows: 'economic operator' shall mean business associations, public-benefit organizations, law offices, notaries' offices, patent practitioners offices, court bailiff's offices, European public limited liability companies, cooperative societies, housing cooperatives, European cooperative societies, water management companies (with the exception of public utility water works associations), forest management associations, voluntary mutual insurance funds, private pension funds, sole proprietorships and groupings, including European economic interest groupings, European groupings of territorial cooperation, associations, foundations, and all other legal entities and unincorporated organizations qualified as business associations under national law, and any other organization pursuing economic activities who have their center of main interests within the territory of the European Union according to Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (hereinafter referred to as "Regulation 2015/848/EU"), and the insolvency proceedings to which it subject falls within the scope of Regulation 2015/848/EU.

In Hungary, under specific circumstances, also private individuals may initiate private bankruptcy proceedings against themselves, and the jurisprudence lists the debt settlement procedures of the local municipalities under the insolvency procedures, but, given that the insolvency procedures of the economic operators are the most common, we intend to provide information regarding these most common proceedings.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Bankruptcy proceedings might be initiated by the economic operator's own executive officer in case of insolvent financial situation. For this, the consent of the main decision-making body is required.

Liquidation procedures might be initiated upon the request of a creditor (as defined in the Bankruptcy Act), the debtor itself or the liquidator (in a winding-up procedure). In addition, in some cases, liquidation procedure might be initiated by the court ex officio. Before filing a request for liquidation, creditors are requested to send a payment notice to the debtor the content of which is strictly stipulated in the Bankruptcy Act.

3. How is a debtor's insolvency officially declared?

The insolvency is declared by the competent Regional Court.

4. Where is the declaration of insolvency published? Are there online-registers?

It is published in the official Company Gazette. The relevant information are also registered into the Hungarian company registry. Both are available online and are free of charge.

5. Which different type of insolvency / liquidation proceedings do exist?

The Bankruptcy Act distinguishes two main types of insolvency proceedings.

The point of the bankruptcy proceedings ("*csődeljárás*") is that the debtor receives, upon request, a payment moratorium in order to reach an agreement with its creditors over the settlement of its debt. The purpose of this procedure is to ensure that the debtor is capable of reorganizing its business, instead of liquidating the debtor.

In contrary, the liquidation proceedings ("*felszámolási eljárás*") aims the liquidation (thus termination) of an insolvent debtor without legal successor, whereby the claims of the creditors, out of the assets of the debtor entity, are satisfied as far as possible in the manner and order established by law.

Here we also mention the winding-up procedures which are the ordinary, voluntary way to terminate an economic operator. The winding-up procedures are decided to be initiated by the decision-making body of the economic operator and are executed by a liquidator appointed also by the decision-makers. Since the winding-up procedures are not considered as insolvency procedures, in this questionnaire, we do not intend to cover these proceedings.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

The Hungarian legislation and jurisprudence consider the bankruptcy proceedings (even though their purpose is the reorganization/restructuring) as an insolvency procedure. In Hungary, in most of the cases, the bankruptcy procedures end unsuccessfully and turn into liquidation.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  Both the bankruptcy and the liquidation proceedings are court supervised or initiated by the court (upon request or ex officio).
- **if the opening of the proceeding is published**
  Commencements of the proceedings' are published in the Company Gazette, furthermore, the economic operator being under an insolvency procedure must indicate this fact in its name. In case of bankruptcy procedure, the economic operator shall supplement its name with the term "*csődeljárás alatt*" or "cs. a." in short ('under bankruptcy'), while in case of liquidation procedure the supplementation shall be "*felszámolás alatt*" or "f. a." in short ('under liquidation').
- **which is the purpose of the proceeding**
  The purpose of the bankruptcy proceedings is the reorganization, while the liquidation procedure aims the termination of the debtor (although liquidation procedures do not always end up in the termination of the debtor).
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**

If the bankruptcy procedure ends with an agreement, the procedure does not turn into a liquidation procedure. If later a new liquidation procedure gets initiated, this new procedure shall not affect the payments made on the basis of the former bankruptcy agreement.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

In bankruptcy proceedings the executive officers, decision-makers and owners of the economic operator shall exercise their right only to an extent that does not harm the rights of the asset manager (insolvency administrator) which are provided by the Bankruptcy Act. In certain cases, the court might provide the asset manager with joint right of representation and joint right of disposal over the bank accounts of the economic operator being under bankruptcy.

In the liquidation proceedings the decision-makers and owners of the economic operator shall not be entitled to make decisions concerning the assets of the economic operator, and only the liquidator may make legal statements regarding those assets.

In both of the above procedures, the Bankruptcy Act stipulates certain tasks to be performed by the executive officers.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

(x) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim forever?

In bankruptcy proceedings the creditor may file their claim within 30 days (or in case of claims arising after the opening of the bankruptcy procedure, within 8 working days) as of the publication of the court's order initiating the bankruptcy procedure in the Company Gazette. In the event of failing this deadline, the creditor may not take part in the bankruptcy agreement and the effect thereof shall not cover the creditor.

In the liquidation procedures, in general, the claims may be filed within 40 days as of the publication of the court's order initiating the liquidation procedure in the Company Gazette. In case of failing this deadline, the creditor may file its claim also within 180 days, but in this case the claim gets registered in a disadvantageous category, that means it gets settled only in case there are assets left after the satisfaction of the higher categories which is unlikely. Failing the 180-day deadline shall result in the loss of right.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(x) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

There are no specific limitations concerning the types of claims that may be filed, however to in rem rights, special rules might be applied.

Regarding the retention of title, the Bankruptcy Act sets forth that those assets shall not be construed to comprise the economic operator's assets which are in the debtor's possession and in respect of which the seller reserved the right of ownership until the purchase price is paid in full. There is an exception, however, considering that if the debtor has lawfully used such assets - before the purchase price was paid in full, for creating a new asset, and hence the asset in question had been incorporated into the new asset, such assets are to be considered as the part of the economic operator's assets.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

This topic is far more complex then it could be described shortly.

In the liquidation procedure, the main categories are the following, however, we note that in each category there are subcategories as well, and the main categories are described by the Bankruptcy Act more in detail.

a) Costs of the liquidation

a. Claims secured with lien

b. Annuity-like claims

c. Claims of private individuals which are not arisen out of business activity

d. Tax-like claims

e. "Other claims"

f. Claims of the debtor's executive officers, members, relatives thereof etc.

15. What effect does insolvency proceeding have on enforcement proceedings brought by individual creditors?

In the bankruptcy procedures the enforcement proceedings being in progress at the time of the opening of the bankruptcy procedures shall be suspended.

In case of liquidation procedures, the enforcement proceedings being in progress at the time of the opening of the liquidation procedure shall be terminated.

16. What effect does insolvency proceeding have on pending lawsuits?

Bankruptcy procedures do not have any special effects on pending lawsuits.

The lawsuits initiated before the liquidation shall continue, however the claimants shall file their claims in the liquidation as well.

17. What effect does insolvency proceeding have on current contracts?

The contracts concluded before the initiation of the bankruptcy procedure shall remain in effect. A contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds of the debtor's bankruptcy or its failure to settle during the term of the payment moratorium its debts incurred before the term of the payment moratorium.

In the liquidation procedure, as a general rule, the liquidator may terminate the contracts unilaterally with some exceptions. Such exceptions are for instance the lease agreements concluded with private individuals for apartments; labor contracts etc.

18. Under which conditions may set offs be invoked?

In the bankruptcy proceedings, during the payment moratorium, setoff may not be applied against the debtor, however, a setoff claim may be heard in judicial proceedings initiated by the debtor and still in progress, if submitted before the time of the opening of bankruptcy proceedings.

In liquidation procedures the debtor may allege to have satisfied the creditor's claim by way of offsetting if it is able to verify that

- its claim exists,
- it originates from before the time of receipt of the creditor's payment notice, and
- it became due past the deadline for contesting the creditor's claim.

Offsetting may also take place, if the debtor is able to verify of gaining knowledge of the existence or expiry of his claim from the creditor after receipt of the payment notice; or the claim requested to be satisfied by way of offsetting is recognized by the creditor.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Under specific circumstances, the creditor, and on behalf of the debtor, the liquidator may file for legal action to contest contracts of commitments of the debtor concluded within a certain time limit before the petition for liquidation arrived at the court. The reason for contesting such contracts or commitments are for instance:

- it was intended to conceal the debtor's assets or to defraud any one creditor or creditors
- it was intended to transfer the debtor's assets without any compensation or to undertake any commitment for the encumbrance of any part of the debtor's assets, or if the stipulated consideration constitutes unreasonable and extensive benefits to a third party;

- it was intended to give preference and privileges to any creditor, such as the amendment of an existing contract to the benefit of a creditor, or to provide financial collateral to a creditor that does not have one;
- if it was made for the purpose of transfer of ownership by way of guarantee, or the assignment of a right or claim by way of a guarantee or exercising a collateralized option to buy, where the beneficiary exercised such acquired right by failing to fulfill his obligation of accounting toward the debtor, or did so improperly, and/or failed to pay the amount remaining after the secured claim is satisfied.

20. What are the rules of the distribution of proceeds?

This topic is strongly connected to question No. 14, so we note again that it is also impossible to describe these rules accurately in a few sentences. In general, there are two conditions which are to be taken into account. The first is the time of the filing of the claim. As mentioned at question 9, the claims filed within 40 days are preferred compared to those filed after this deadline but within 180 days at the latest. The second condition is the rank in which the filed claim gets registered by the liquidator considering that, in general, the assets shall be distributed according to the ranking as described at question 14. In case the assets are not enough to fulfill all the claims, at first the costs (a.) then the claims which are secured with lien (b.) shall be fulfilled. If there are assets left, the annuity-like claims (c.) and then the claims of private individuals which are not arisen out of business activity (d.) shall be settled proportionally. Claims in the remaining categories are settled only in case any assets are left after fulfilling the claims in the higher, prioritized categories. Distributing the assets shall be done within these last categories proportionally.

21. What are the conditions for and the effects of closure of insolvency proceedings?

Bankruptcy procedure: after the debtor and the creditors agree on the terms of the bankruptcy agreement at the composition conference, the executive officer of the debtor shall notify the court thereon. If the agreement complies with the relevant legal provisions the court, in its decree, approves the agreement's content and declares the bankruptcy procedure finished. In case the debtor and the creditors cannot reach an agreement at the composition conference or the agreement does not comply with the laws, the court ceases the bankruptcy procedure and orders the bankruptcy to turn into liquidation. In case the debtor breaches the bankruptcy agreement, it may be a cause to initiate liquidation.

Liquidation procedure: at the end of the liquidation, the liquidator shall prepare the closing financial documentation (balance sheet, closing tax report, proposal for distribution of assets etc.) and shall send it to the court and the tax authority. After this, the court sends this documentation to the creditors. Creditors are entitled to submit objection against the content thereof within 30 days of receipt. On the basis of this financial documentation, the court decides on the bearing of costs, on the liquidator's fee, on satisfaction of the claims of creditors, on the closing of current accounts and on the abrogation of securities issued by the debtor by way of the central depository, furthermore, it orders the liquidator to take the measures yet required. Simultaneously, the court decides concerning the conclusion of liquidation and the dissolution of the debtor, and also on the dissolution of any subsidiary of the debtor, or the trust company as applicable.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

In the Hungarian Criminal Code, there are two criminal conducts which are in connection with the insolvency proceedings, namely the followings:

One commits *fraudulent bankruptcy* in case he, in connection with the imminent insolvency of an economic operator covered by the Bankruptcy Act, actually or fictitiously, diminishes the economic operator's assets by concealing, disguising, damaging, deteriorating or destroying,

or by making unusable such assets or any part thereof; by concluding a fictitious transaction, or recognizing a doubtful claim; or by other means, in contradiction to the requirements of prudent management; and thereby prevents the satisfaction of creditor or creditors in part or in whole.

A liquidator commits *misprision in liquidation proceedings*, if he has positive knowledge of any breach of accounting regulations or fraudulent bankruptcy committed in the course of liquidation proceedings and fails to report it at the earliest opportunity to the authorities.

Concerning the additional civil consequences, in this regard the liability of the executive officers for mismanagement and the liability of the members, founders, owners etc. of the debtor may be determined, but this topic is far more complex. In general, any creditor or - in the debtor's name - the liquidator may bring action during the liquidation proceedings before the court to establish that the former executive officers of the economic operator (including any person with power to influence the decision-making mechanisms of the economic operator) failed to exercise their management functions in the interests of creditors in the span of three years prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency, in direct consequence of which the economic operator's assets have diminished, or providing full satisfaction for the creditors' claims may be frustrated for other reasons. If the liability of the former executive director is established by the court in this lawsuit, the creditor may initiate another lawsuit for satisfying its claim registered in the liquidation proceedings, that was not recovered in the liquidation proceedings, up to the extent of loss suffered.

Once the liability of the former executive officer is determined by the court as per detailed above, the court of registraton – if some further conditions are met - may prohibit the executive officer to gain majority influence in an economic operator, to become a member of an economic operator having limited liability, to be a member of a sole member company and to be an executive officer of an economic operator.

23. Are there any special issues to be mentioned for your country?

No.

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Insolvency and bankruptcy proceedings in Europe

IRELAND

Insolvency and restructuring proceedings in Ireland are primarily governed by theCompanies Act 2014, The Bankruptcy Act 1988 and the Personal Insolvency Act 2012

1. Who may insolvency proceedings be brought against?

Individuals (including partnerships) and Companies

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

RE- INDIVIDUALS The individual can enter into insolvency arrangements themselves specific conditions for same or defined by the particular process chosen. Creditor can apply for bankruptcy proceedings against a debtor if there is a debt amount of above €20,000 and there has been an "act of bankruptcy". The debt should be undisputed. If the bankruptcy proceedings are based on a Court Judgment this generally avoids a dispute being raised as to whether there is a legitimate dispute or not.

RE COMPANIES . Companies can apply to liquidate themselves or a creditor can apply to liquidate the company. For a creditor to liquidate the company the debt must be in excess of €10,000.00 and the debt must be undisputed. A company that is potentially insolvent can protect itself from its creditors and Court action by a Court process called examinership or a scheme of arrangement.

3. How is a debtor's insolvency officially declared?

Generally by publication and by registration.

4. Where is the declaration of insolvency published? Are there online-registers?

Yes for companies insolvency registered at the governments companies registration office. For individuals the insolvency would be recorded on a credit search and by making inquiries of the insolvency service of Ireland.

5. Which different type of insolvency / liquidation proceedings do exist?

RE INDIVIDUAL Bankruptcy

RE COMPANIES Creditors voluntary liquidation –usually initiated by company, Court liquidations – usually instigated by creditors of the company, Members liquidation- usually instigated by directors when company has fulfilled its purpose or directors decide to retire.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

RE COMPANIES. EXAMINERSHIP PROCESS

This is the rescue process in Ireland for companies similar to Chapter11 in The United States and administration in the United Kingdom This is a procedure whereby the Court will decide whether to approve what is in effect a survival plan put forward by the company. The maximum period of Court protection is 100 days. The usual outcome of the process is that creditor balances are reduced, the assets of the company are protected, investment is obtained and the directors remain in control of the business during the examinership process which is supervised by an expert practising accountant called the examiner. Examinership enables a company to explore options to provide for its survival. It involves creditors suppliers

and staff. The process is sometimes not popular with creditors who perceive that the company has the opportunity of survival at their expense as creditors will normally only receive a limited amount of cent in the euro for the debts owed to them by the company.

SCHEME OF ARRANGEMENT

This is a procedure whereby a financially troubled company can reach binding agreement with its creditors over an agreed period of time. A scheme of arrangement can be proposed by directors of company or liquidator of the company. Protection of the court can be obtained prior to scheme of arrangement coming into place. A meeting of creditors will be held and to decide whether to approve the scheme of arrangement which will take place if 75% of creditors agree. Company can continue trading normally through the scheme of arrangement and afterwards. The process can be completed within 8 to 10 weeks

INDIVIDUALS –

INFORMAL SCHEME OF ARRANGEMENT

Informal scheme of arrangement for individuals made informally with creditors, there is no court involvement. Under this arrangement the creditor agrees to accept just a portion of their debt in full and final settlement. Creditors can be receptive to such schemes if the debtor is proactive with his creditors and enters into honest dialogue about his/her financial circumstances. The scheme proposed may be supported by an independent accountants report.

DEBT RELIEF NOTICE

Debt relief notice (DRC) provided for by the Personal Insolvency Act 2012. The purpose is to create an efficient non jusicial means of allowing persons to resolve unmanageable unsecured debt problems. With the assistance of an approved intermediary the debtor can apply to insolvency service of Ireland to certify that unsecured debts be frozen for one year and if following which the person still can't pay the service will certify debts be written off. There are certain general conditions for a DRC amongst which are that it applies to debts of €35,000 or less, secured debts do not qualify for inclusion, the DRC will be formally registered non judicial procedure, there is a restriction on the debtor from applying for further credit.

DEBT SETTLEMENT ARRANGEMENT

Debt settlement arrangements(DSA) provided for by the personal insolvency act 2012. Relevant to consumer debt. With assistance of a personal insolvency practitioner the debtor may apply to the insolvency service of Ireland for a protective certificate in respect of preparation of a DSA. If granted the certificate would provide for a standstill period of 30 working days during which creditors may not take action against the debtor. The personal insolvency practitioner would then put forward a DSA to creditors for agreement(65% approval). If approved there is formal registration of the DSA. At completion of the DSA which normally run for 5 years, all debts covered by the arrangement would be discharged. There are grounds for challenge of a DSA by creditors and Courts may become involved on application to have DSA annulled.

PERSONAL INSOLVENCY ARRANGEMENTS (PIA)

The Personal Insolvency Act 2012 provides for a system of personal insolvency arrangements between a debtor and one or more creditors to repay an amount of both secured and unsecured debt over a period of 6 years

General conditions -

Can only enter into 1 in lifetime

Unforeseeable that debtor will become solvent

Debtor can only propose PIA if DSA would not be viable.

Deals with debtors from €20,000 up to €3 million.

Personal insolvency practitioner will make proposal to creditors and of accepted creditors will then administer the PIA for is duration.

PIA must be supported by at least 65% of creditors. Creditor may apply to veto arrangement which would be heard by Courts.

5.2. Please indicate for each of these proceedings PLEASE SEE ABOVE

- **if the proceeding is court supervised**
- **if the opening of the proceeding is published**
- **which is the purpose of the proceeding**
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively? PLEASE SEE ABOVE

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

(x) other PROOF OF DEBT

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

Time limits vary but if creditor is notified of the insolvency they should submit their claim immediately. If they are not notified then their claim would not be included in the insolvency and potentially the creditors debt would not be bound by the provisions of the insolvency procedure that was formalised.

10. A claim must/can be lodged in:

( ) the official language of the State of the proceeding

(x) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

( ) Translated to the State's official language

(x) English is sufficient

( ) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

General rule is retention of title claims survive insolvency but in practice such clauses will be frequently argued by the liquidator insolvency practitioner on grounds of lack of incorporation of ROT terms into the contract or if incorporated dispute as to wording of the clause and its meaning and effect.

14. How are claims ranked ? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

PLEASE SEE SECTION 20 FOR DETAIL OF PRIORITY OF CREDITORS CLAIMS

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

If the company goes into liquidation it no longer exists so the creditor cannot maintain their claim against the debtor company but if a liquidation petition is issued during the life of the petition other creditors can support the petition and subsequently take over the petition if the original creditor is paid. If the original creditor is paid but subsequent creditors who take over the petition are not and the company goes into liquidation than the original creditor has to repay the funds because otherwise his payment would be a preferential payment which is not permissible.

16. What effect does insolvency proceeding have on pending lawsuits?

The effect is that the law suit can be maintained by the creditor if it is a company insolvency until the company goes into liquidation and the creditors claim is dealt with by the liquidator according to the class of creditor and assets if any available to distribute from the liquidation of the company.

17. What effect does insolvency proceeding have on current contracts?

Depends on contractual terms of the relevant contract but contractual provisions which allow for termination of the contract on the entry by company into insolvency/restructuring process are common and enforceable against a liquidator. Liquidator may within 12 months after commencement of liquidation disclaim un profitable property including unprofitable contracts.

18. Under which conditions may set-offs be invoked?

Under statutory insolvency set off rules, set off of mutual credits and debts is permitted but not mandatory. Contractual set off will survive insolvency and is enforceable against a liquidator.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

If the company is trading while insolvent or makes preferential creditor payments then those preferential payments may be set aside by court action of liquidator and distributed according to class of creditor.

20. What are the rules of the distribution of proceeds?

Distributed according to class of creditor namely in flowing order

(1) Fixed charge holders

(2) costs of petitioning creditor

(3) liquidators fee

(4) tax

(5) floating charge holders

(6) non preferential debts

21. What are the conditions for and the effects of closure of insolvency proceedings?

Insolvency procedures can be closed and not proceeded with if there is a settlement agreement reached with company or individual by creditor(s)

22. Could there be other civil or criminal consequences of insolvency or liquidation?

May result in court action against directors for reckless trading, company directors may not be allowed to hold directorships. In rare occasions the corporate veil may be pierced and directors become personally liable

23. Are there any special issues to be mentioned for your country?

Ireland has a flexible corporate recovery and insolvency framework. The Courts will act to balance the need for certainty for creditors in relation to enforcement against the requirement of debtors to be protected in certain circumstances.

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Insolvency and bankruptcy proceedings in Europe

ITALY

The new corporate crisis code (*nuovo codice della crisi*), which will come into force definitively in September 2021, will not overturn existing insolvency law.

The main changes will mainly concern company law issues and the introduction of the so-called "alert and prevention phase".

This new phase will introduce a system in which the internal control bodies and some qualified public creditors (e.g. *Agenzia delle Entrate*, *INPS*) are required to report the onset of the crisis to a body that will be established at the Chambers of Commerce (*Camere di Commercio*), namely the Assisted Crisis Composition Body (*OCRI*). This body will be called upon to "guide" the undertaking in the crisis and help him to find a solution.

If the alert or assisted settlement procedure will be unsuccessful, the Assisted Crisis Composition Body will inform the public prosecutor so that he can submit a petition for judicial liquidation.

The provisions on alerts will be not applied to:

e. companies with stakes listed on regulated markets;

f. companies with a relevant part of stakes placed to the public (as defined by the Italian Banking and Finance Surveillance Authority CONSOB);

g. large enterprises;

h. large groupings of companies;

i. supervised companies (as banks, financial intermediaries, investment funds).

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against commercial operators (individuals or companies) provided that they have either:

j. assets of €300 000.00 or more in the three years before the application for insolvency or composition

k. gross annual revenue of €200 000.00 or more in each of the three years before the application for insolvency or composition

l. total debts (on the date of the application for insolvency or composition) of €500 000.00 or more (regardless of the date on which they arose)

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

a) Insolvency occurs when defaults or other external facts demonstrate that the debtor is no longer able to meet its payment obligations properly.

It can be applied for by:

- the debtor
- a creditor
- the Public Prosecutor

The Public Prosecutor makes the request:

i) when the insolvency results from criminal proceedings, i.e. the flight, unavailability or absconding of the undertaking, the closure of the undertaking's premises, the theft, replacement or fraudulent diminution of assets by the undertaking;

ii) when the insolvency results from a warning of the Court which detected it in the course of civil proceedings.

b) An arrangement with creditors (*concordato preventivo*) requires that the undertaking is in difficulty (i.e. is experiencing financial difficulties that are not severe enough to cause insolvency).

It can be applied for only by the debtor.

3. How is a debtor's insolvency officially declared?

Insolvency is declared by the competent Court (*Tribunale, sezione fallimentare*) at the request of one or more creditors, the debtor or the Public Prosecutor. In the absence of a request, the Court cannot declare insolvency *ex officio*.

The insolvency proceeding shall be brought before a collegiate tribunal in closed session. The court summons the debtor and the creditors. In case the public prosecutor has taken the initiative to apply for insolvency, he is involved as well in the proceeding.

4. Where is the declaration of insolvency published? Are there online-registers?

The judgment opening insolvency proceeding will be published at least one day after its issuing and shall be lodged at the Court registry; it shall be notified, where necessary, at the undertaking's address and an extract from it shall be transmitted to the directors and the applicant.

The judgment is also recorded at the public companies register.

In addition, many Italian Courts keep online registers providing information about all pending insolvency proceedings. However, these registers are not always up to date and complete. In any case information about pending insolvency applications are not publicly available.

5. Which different type of insolvency / liquidation proceedings do exist?

There are different types of insolvency proceedings: the main ones, all governed by law, are:

m. insolvency or judicial liquidation (*fallimento* or *liquidazione giudiziale*)

n. compulsory administrative liquidation (*liquidazione coatta amministrativa*)

o. voluntary liquidation (*liquidazione volontaria*)

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

p. arrangement with creditors (*concordato preventivo*)

q. restructuring agreements (*accordi di ristrutturazione*)

r. extraordinary administration (*amministrazione straordinaria*)

s. proceedings for the resolution of over-indebtedness crisis (*procedure di composizione della crisi da sovraindebitamento*)

5.2. Please indicate for each of these proceedings if

- **íf the proceeding is court supervised**
- **if the opening of the proceeding is published**
- **which is the purpose of the proceeding**
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**

a) arrangement with creditors (*concordato preventivo*)

- Court supervised
- opening of the proceeding is published (company register)
- It is aimed at restructuring also through the continuation of the business and possibly the transfer of the company to a third party or to liquidate the assets and put the proceeds at the service of the satisfaction of the claims, thus avoiding bankruptcy.
- In case of future insolvency, payments made in execution of the arrangement are exempt from revocation.

b) restructuring agreements (*accordi di ristrutturazione*)

- Court supervised
- opening of the proceeding is published (company register)
- Its objective is to reduce the company's debt exposure and, consequently, to restructure the company. It is based on an agreement with many creditors representing at least 60% of the receivables and on the report of a professional certifying its feasibility.
- In case of future insolvency, payments made in execution of the agreement are exempt from revocation.

c) extraordinary administration (*amministrazione straordinaria*)

- Court supervised
- opening of the proceeding is published (company register)
- It is the insolvency procedure of a large commercial company that has become insolvent. It has the purpose of preserving the productive assets, through the continuation, reactivation or reconversion of business activities.
- In case of future insolvency, payments made in during the extraordinary administration are exempt from revocation.

d) proceedings for the resolution of over-indebtedness crisis (*procedure di composizione della crisi da sovraindebitamento*)

- Court supervised
- opening of the proceeding is published
- Purpose of the proceeding is to resolve, by means of an agreement with creditors, the crisis of a company that is not subject to other insolvency procedures and that is in a situation of over-indebtedness (i.e. a situation of persistent imbalance between the obligations assumed and the assets that can be liquidated promptly to meet them). The proposal must provide for the restructuring of debts and the satisfaction of claims in any form, including the assignment of future claims.
- In case of future insolvency, payments made in during the extraordinary administration are exempt from revocation.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The debtor can be questioned by the administrator to reveal information and can challenge measures taken by the administrator, but only if they were adopted in breach of the law (not, therefore, merely for reasons of expediency).

The insolvency administrator has the power/duty to manage the assets, sell them, and distribute the proceeds to the creditors.

7. Who may raise a claim in the case of a debtor's insolvency/liquidation?

(**x**) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

(**x**) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist?

Creditors must submit applications for admission of claims at least 30 days before the hearing scheduled for the examination of the credits.

They may also submit late applications within a period of 12 months (which can be extended by Court up to 18 months) after the declaration of enforceability of the final list of lodged credits.

10. A claim must/can be lodged in:

(**x**) the official language of the concerning State

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(**x**) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

If the creditor wants to claim a preference right, this has to be specified in the initial application.

12. Documents concerning the claim must be...

(**x**) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged?

All credits and all rights *in rem* or in person, whether on movable or immovable properties.

14. How are claims ranked?

Credits can be preferential (*privilegiati*) or ordinary (*chirografari*). Preferential credits are paid before others and in higher percentages, but preference must be immediately claimed.

Preferential credits are, for example, salary of workers, commissions of commercial agents, fees of certain individual professionals, mortgages on real estate.

15. What effect does insolvency proceeding have on enforcement proceedings brought by individual creditors?

From the day of the declaration of insolvency no individual enforcement or precautionary action, even for claims accrued during the insolvency, can be initiated or continued on the assets included in the insolvency.

16. What effect does insolvency proceeding have on pending lawsuits?

The opening of the insolvency proceeding bring any civil lawsuit of the insolvent company to an automatic interruption. The other party can file a resumption of the Court claim against the administrator. Also the administrator ca decide to restart the lawsuit.

17. What effect does insolvency proceeding have on current contracts?

As a general rule, the execution of current contracts shall remain suspended, at least until the administrator, duly authorized by the committee of creditors, declares that he takes over the contract, assuming all the obligations relating thereto, or decides to terminate the contract.

The contracting party may ask the Court to establish a time limit not exceeding sixty days for the decision of the administrator. In this case, the contract shall be deemed to be terminated if the administrator does not communicate his decision within the time limit.

Special rules apply to certain types of contracts, such as leasing, renting, sale of goods under reservation of title, procurement and insurance.

18. Under which conditions may set-offs be invoked?

Anyone who has to pay money to the insolvency administrator can set off this debt with a claim (*controcredito*) in respect of the same proceedings, but only if both (debt and the claim) arose before the proceeding has been opened.

19. What are the conditions of avoidance actions against legal acts entered into prior to the opening of insolvency proceeding?

The administrator may revoke any of the following debtor's transactions (payment, contract, guarantee or other):

t. transaction carried out within the last 12 months before the opening of the insolvency proceeding if the creditor has obtained 25% more than the value of his credit;

u. extinctions of debts other than payments carried out with the last 12 months before the opening of the insolvency proceeding;

v. mortgages granted for debts not already due within the last 12 months before the opening of the insolvency proceeding;

w. mortgages granted for debts already due within the last 6 months before the opening of the insolvency proceeding;

x. any payments of debts provided within the last 6 months before the opening of the insolvency proceeding, if the administrator proofs that the creditor had knowledge of the state of insolvency of the debtor.

20. What are the rules of the distribution of proceeds?

The proceeds from the sale of the assets are distributed among all the creditors in respect of the priority rights (see above under point 14).

If (as almost always happens) the proceeds are insufficient to cover all the claims, they are distributed in respect of the priorities. If after the satisfaction of all preferential credit there are still remaining proceeds the administrator will distribute it in proportion to the amounts of each single ordinary claim.

21. What are the conditions for and the effects of closure of insolvency proceedings?

Insolvency proceedings are closed, alternatively:

- if no claims have been submitted
- once all claims have been paid
- once the entire proceeds of the sale of the assets have been distributed
- once it is ascertained that no (also only partial) satisfaction of the creditors can be obtained, neither the cost of the proceeding can be covered.

The closure of an insolvency proceeding has to be declared by the Court. If the insolvent is an incorporation, it will be cancelled from the Companies Register.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

The company or third party creditors may bring a civil action for damages against members of the administrative body who have committed negligent or harmful acts of management for the company, breached accounting requirements, caused by their negligence a definitive asset shortfall such as not to allow the company to fulfil its obligations (for example, to have favored financing to companies already known to be insolvent, to have carried out high-risk initiatives having acquired only summary information, to have overestimated the company's assets).

The insolvency entrepreneur and the members of the management body of the bankrupt company may also incur criminal liability. There is a long list of insolvency criminal offences, which include: false corporate communications, prevented control to the detriment of shareholders, illegal distribution of profits and reserves, operations to the detriment of creditors, illegal influence on the shareholders' meeting.

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Insolvency and bankruptcy proceedings in Europe

LUXEMBOURG

Introduction

Luxembourg has on average around 35.000 companies with between 2,500 and 3,500 companies that are created each year

A number of such companies is subject to bankruptcy proceedings. According to a recent research most companies that went bankrupt (78%) where companies that were over five years old.

Most companies contain important assets mainly composed by participations in other non-Luxembourgish companies. Recovery of debts in insolvency proceedings in Luxembourg usually therefore must include a non-Luxembourgish jurisdiction.

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against traders (natural and legal persons). There are also insolvency procedures specifically for notaries, credit institutions, insurance companies and collective investment undertakings.

2. What are the conditions for opening insolvency proceedings?

Article 437 of the *Code de Commerce* retains two criteria which have to be met cumulatively: the inability to pay one's debts as they fall due; and the inability to raise credit.

3. How is a debtor's insolvency officially declared?

Insolvency is declared by court order. The court opens the insolvency proceedings retroactively from 0h00 of the day of the promulgation, also in case of appeals and determines the time of the suspension of payment and suspect period.

4. Where is the declaration of insolvency published? Are there online-registers?

The order by court declaring insolvency will be placed on the court board and the bankrupt must be served notice of the meeting by a court officer, or by publication in a Luxembourg newspaper.

There is no central insolvency register in Luxembourg. Whether a trader domiciled in Luxembourg or a commercial company domiciled there is insolvent can be requested from the locally competent district court (*Tribunal d'Arronddissement*) in Luxembourg or Diekirch.

In the case of commercial companies, it is possible to request information from the Luxembourg Commercial and Companies Register (www.lbr.lu). Furthermore, a search is possible on the website of the Luxembourg bar (http://www.barreau.lu/faillites).

5. Which different type of insolvency / liquidation proceedings do exist?

The following types of procedures are provided for by Luxembourg law for general corporates which are domiciled in Luxembourg and are not governed by a special legislation as mentioned hereafter:

- *Faillite* (bankruptcy) (articles 437 ff of the *Code de Commerce*).
- *Gestion contrôlée (controlled management) (grand-ducal decree of 24 May 1935).*

- *Sursis de paiement (suspension of payments) (articles 593 ff of the Code de Commerce)*
- *Concordat prêventif de faillite (preventif bankruptcy agreement, law of 14 April 1886).*

The most common insolvency procedure provided for by Luxembourg law is the insolvency (*faillite)*. Controlled management, suspension of payments and preventif bankruptcy agreements are impractical in its execution and very rarely used

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

Once bankruptcy has been ordered, bankrupt traders are divested of the right to administer their assets and can no longer make any payments or carry out any transactions or other acts in relation to those assets. Following this order, administration of the debtor's assets is entrusted to a trustee.

Administration of the assets is entrusted to a court-appointed trustee who is responsible for realising the debtor's assets and distributing the proceeds between the various creditors, in accordance with the rules on preferential claims and charges on property.

7. Who may raise a claim in the case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(x) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist?

Filings are possible as long as the bankruptcy proceedings are ongoing.

That said, the court will usually set a time limit of maximum 20 days, calculated from the date of the publication of the bankruptcy (Article 442 of the *Code de Commerce*) inviting debtors to file their claim with the court and then set a hearing to verify the basis of the bankruptcy and the legality of the claims.

In theory it is possible, that after the first hearing the bankruptcy shall be lifted. One condition therefore is among others the payment of all declared claims of the company.

If bankruptcy proceedings are not lifted, claims may be filed as long as the proceedings are ongoing.

10. A claim must/can be lodged in:

(x) the official language of the concerning State (French, German or Luxembourgish)

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

( ) Translated to the State's official language

(x) English is sufficient

( ) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

13. Which type of claims can be lodged?

Liens, first ranking mortgages, retention of title or wages may be asserted as a claim.

14. How are claims ranked?

All creditors whose claims compete in the *faillite* constitute the "mass of creditors" ("masse des cr*éanciers")*. Some creditors with a security or preferential claim are paid first. *Creditors who benefit from a first ranking mortgage or pledge are conisdered „out of the mass" as they may enforce such scurity and therefore do not compete with the other creditors.*

Apart from that, certain claims shall have preferential status, such as: the preferential right of employees, certain social securitiy claims or claims by the tax authorities.

In principle, the cost of the insolvency proceedings are to be borne by the company itself ans such cost are to be paid prior to prebankruptcy creditors' unsecured claims.

15. What effect does insolvency proceeding have on enforcement proceedings brought by individual creditors?

Unsecured creditors will not be in a position to enforce their rights once an insolvency proceeding is under way. In ordinary *faillite* proceedings, it is as from the day of the bankruptcy decision that claims can no longer be enforced.

In *faillite* proceedings, beneficiaries of security strictly speaking, such as pledges and mortgages, which have been validly instituted, are entitled to enforce their secured claims notwithstanding the bankruptcy.

16. What effect does insolvency proceeding have on pending lawsuits?

Litigation already in progress when the insolvency proceedings are opened can be validly continued by the insolvency administrator acting in that capacity. However, applicants in such cases must regularise the proceedings by involving the insolvency administrator who alone has the power to represent validly the bankrupt debtor.

17. What effect does insolvency proceeding have on current contracts?

Contracts are not, in principle, affected by bankruptcy proceedings. Where the bankruptcy administrator or liquidator will wish to terminate a contract otherwise than in accordance with its terms or the law, the insolvent estate may incur liability towards the co-contacting party.

18. What effect does insolvency proceeding have on debtor's employees?

Article L.125-1 of the *Code du travail* (labour code) states that employment contracts are terminated with immediate effect and by operation of law when a company is declared *faillite*.

19. Are there special remedies to secure employee's right to salary?

(x) Wage guarantee fund

( ) Priority over secured claims

( ) Priority over unsecured claims

( ) Insurance system

( ) None

( ) Other:

20. Under which conditions may set-offs be invoked?

Pursuant to article 445 of the *Code de Commerce*, set off, including as a result of a set off/netting agreement, is prohibited as of the date of the *faillite*.

Case law has however decided, although in a restrictive way, that post-bankruptcy set off is admissible if there is connection between the mutual claims to be set off, meaning that such claims need to have a common "cause" and, therefore, be indivisible.

21. What are the conditions of contesting transactions entered into prior to the opening of insolvency proceeding?

The period from the date so determined until the bankruptcy decision is referred to as the "preference period" (période suspecte). The concept of preference period is among the most central concepts of Luxembourg insolvency law because transactions made during that period are particulary vulnerable to attack.

In particular, certain transactions and acts defined in article 445 of the Code de Commerce, if made during the preference period and up to 10 days before, are void by operation of law and shall thus be annulled by the Court upon application of the bankruptcy administrator.

Article 446 of the Code de Commerce further provides that all other payments and transactions made by the faille during the preference period may be annulled by the Court if they have been made or entered into while the other interested party was aware of the cessation de paiements.

Article 447 of the Code de Commerce provides that mortgages constituted during the preference period and up to 10 days before, may be declared void by the Court if there have been more than 15 days between the day on which the mortgage has been created and the day on which it has been duly registered.

Article 448 of the Code de Commerce provides that all transactions and payments made fraudulently against the other creditors' interests are null and void, whatever be the date on which they have been made.

22. What are the rules of the distribution of proceeds?

Each creditor must receive an identical share proportional to the amount of their claim. The trustee must verify each claim by referring to the law and case-law.

The net assets available to unsecured creditors must be distributed on a pro rata basis in accordance with Article 561 of the *Code de Commerce*.

Once the trustee knows the amount of the fees set by the court, has ranked the preferential creditors and knows the amount left to be distributed between the unsecured creditors, he draws up an asset distribution plan that is submitted in the first instance to the official receiver. In accordance with Article 533 of the *Code de Commerce*, the trustee invites all creditors to the presentation of accounts meeting by registered letter, to which he attaches a copy of the asset distribution plan.

Following the presentation of accounts, the trustee pays the creditors.

23. What are the conditions for and the effects of closure of insolvency proceedings?

Faillite results in the liquidation and dissolution of the company. Where gestion contrôlée proceedings succeed, the company will continue to exist and be able to pursue its business.

24. Could there be other civil or criminal consequences of insolvency or liquidation?

Article 440 of the *Code de Commerce* obliges the directors of a company which is incapable to meet its payment obligations to within a month's time from such stop of payments (*cessation des paiements)*, declare its insolvency at the clerk (*greffe)* of the Commercial Court.

If directors do not comply with this obligation, different types of sanctions may apply. A possible sanction is the prohibition to further engage in a commercial activity. In certain circumstances, the directors may also be condemned as "*banqueroutier simple*" or as "*banqueroutier frauduleux*", each of these is a criminal offence subject to a fine and to imprisonment.

The Civil liability of directors continuing to trade where a company is in financial difficulties remains in principle subject to the ordinary rules of directors' liability.

Article 495-1 of the Code de Commerce provides that where directors' gross negligence has caused or contributed to the occurrence of bankruptcy, the Court may decide that they will have to bear part of the debts of the bankruptcy.

Under Sections 103 and 108 of the General Tax Law, directors are held personally liable for the fulfilment of their company's tax obligations (ie, direct income taxes). Further, directors are held jointly and severally liable for direct tax claims (eg, payroll withholding tax). Thus, if a company is declared bankrupt, the Tax Administration may sue its directors to settle the company's social tax claims and debts.

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Insolvency and bankruptcy proceedings in Europe

MALTA

Introduction

The Maltese insolvency law regime distinguishes between the *insolvency* of a company as regulated by the Companies Act, Chapter 385 (the "**CA**") of the laws of Malta and the *bankruptcy* of natural persons or commercial partnerships *en nom collectif* or *en commandite* regulated by the Commercial Code, Chapter 13 of the Laws of Malta. This questionnaire shall focus on the insolvency proceedings of companies.

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against a company registered in Malta in terms of the CA.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

In Malta, insolvency proceedings can be instigated by court application (court winding up) or by an extraordinary resolution of the company (creditors' voluntary winding up).

In a court winding up, the person applying to the court for the insolvent liquidation of the company will need to prove to the satisfaction of the court that the company is "unable to pay its debts". This term is defined in the CA such that a company will be deemed to be unable to pay its debts if (a) a debt due by the company has remained unsatisfied in whole or in part after twenty-four weeks from the enforcement of an executive title against the company by any of the executive acts specified by law; or (b) if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company. An application requesting a court winding up may be made by the company itself through its board of directors, by any debenture holder, any creditor or contributory or even by a shareholder or a director in some cases.

In a voluntary winding up, the shareholders must resolve, by extraordinary resolution to dissolve the company. If the directors of the company are not able to make a declaration of solvency, then the winding up necessarily becomes a so-called creditors' voluntary winding up.

3. How is a debtor's insolvency officially declared?

A debtor company may be declared insolvent by the court in a court winding up procedure. Otherwise, there is no formal declaration of insolvency of a company. When the shareholdrs of a company resolve to put the company into liquidation and the directors are unable to issue a declaration of solvency there is a presumption that the company is insolvent, but there is no formal declaration of insolvency. Note that the Office of the Official Receiver has established and maintains an Insolvency Register which provides free of charge data to the general public. Documentation denoting that a company is being liquidated whether by virtue of a voluntary winding up or court winding up is also published on the Malta Business Registry (the "**Registry**") website, government gazette and in some instances, even in local newspapers.

4. Where is the declaration of insolvency published? Are there online-registers?

Please see above. The declaration of solvency, once made, must be registered with the Registry. The registry is accessible online and certain documents can be filed online also.

5. Which different type of insolvency / liquidation proceedings do exist?

a) Voluntary winding up: Members' voluntary winding up (Company must be solvent) **or** Creditors' voluntary winding up (Company is insolvent)

b) Court winding up

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

Where the directors of a company become aware that the company is unable to pay its debts or is imminently likely to become unable to pay its debts, they must within thirty days from the fact becoming known to them, duly convene a general meeting of the company for the purpose of reviewing the company's position and determining what steps should be taken, including consideration as to whether the company should be dissolved or whether the company should make a company recovery application. A company recovery application may be made to the Court requesting it to place the company under the company recovery procedure ("**CRP**") and to appoint a special controller to administer the business of the company for a period set by the Court.

Furthermore, the CA provides for a so-called 'company reconstruction' procedure whereby an application may be filed to sanction a compromise or arrangement between a company and its creditors (or any class of its creditors) in such circumstances.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  Yes, the CRP is court supervised and a special controller is appointed and will act upon authority of the Court and subject to its scrutiny. Similarly, the company reconstruction procedure is supervised and subject to the sanction of the court.
- **if the opening of the proceeding is published**
  Yes, the company recovery application as well as the issuance of a company recovery order as well as any other relevant documents, shall be sent to the Registry for registration. Similarly, the court order and compromise or arrangement must be sent to the Registry for registration.
- **which is the purpose of the proceeding**
  The purpose of both the CRP and the company reconstruction procedure is to help companies recover from temporary financial difficulties. They are intended to safeguard the interests of the company, its employees, its shareholders and its creditors. Thus, in a CRP, the Court will only make the order if it believes it would be likely to achieve one of the following purposes:

  1) survival of the company as a viable going concern in part or in whole **or**

  2) the sanctioning of a compromise or arrangement between the company and any of its creditors or members.

  In a company reconstruction procedure, the court will sanction the arrangement only if approved by at least two-thirds of the creditors (or class of creditors) concerned.
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency.**
  There is nothing in the law prohibiting payments during the term of a CRP or company reconstrution process. In the case of a CRP, the court will appoint a special controller who takes over the management of the company and who replaces the directors. His actions are subject to legal parameters and to court scrutiny. Payments made during this term may be subject to revocation in terms of the provisions regulating so-called 'fraudulent preferences'. Thus, any payment made by a company within six months before the

dissolution of the company will be deemed to be a fraudulent preference against its creditors whether it is of a gratuitous nature or an onerous nature if it constitutes a transaction at an undervalue or if a preference is given, unless the person in whose favour it is made proves that he did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency. In the event of the company being dissolved, every such fraudulent preference will be void. Furthermore, directors will need to be mindful of their exposure to wrongful trading if they continue to perform acts on behalf of the company (e.g. payments) at a time when they knew, or ought to have known that there was no reasonable prospect that the company would avoid being dissolved due to its insolvency under the so-called 'wrongful trading' provisions in the CA.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

When a company is put into liquidation and a liquidator is appointed, all the powers of the directors and the company secretary cease, except to the extent provided at law. In a court winding up, a provisional administrator ("**PA**") may be appointed after receipt of the winding up application up and until a winding up order is made or the application is dismissed. The functions of a PA relate to the administration of the estate or business of the company, as specified by the court.

In every winding up, the liquidator will be able to summon meetings of creditors, members or contributories as the case may be and will also generally have the power to bring or defend actions in the name and on behalf of the company, carry on business of the company as necessary for its beneficial winding up, to realise the assets of the company and pay creditors in accordance with their ranking at law and do anything necessary for winding up the company's affairs. Once the company's affairs are fully wound up, the liquidator will make an account or report of the winding up and will draw up a scheme of distribution (if any).

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

(X) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

There is no time limit at law for the filing of claims, however, a time limit will be set by the liquidator or the court (as the case may be). Creditors would then need to prove their respective debts within the time-frame set, if not proven within such timeframe, the claim may be excluded. It would be up to the court or the liquidator (as the case may be) to extend such time period once provided. In every winding up, not less than fourteen days before the day appointed for the creditors' meeting, the liquidator must send by post to every person

appearing in the company's accounting records to be a creditor of the company, notice of the meeting of creditors. In a voluntary winding up, the liquidator may apply to the Court to fix such time/s within which creditors are to prove their debts or to be excluded from the benefit of any distribution made before those debts are proved. In a court winding up, the court or the liquidator under the control of the court, may fix such a time/s. The existence of the debt or claim will need to be proved to the reasonable satisfaction of the liquidator or court.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

( ) Translated to the State's official language

(X English is sufficient

( ) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

In every winding up of a company the assets of which are sufficient to meet the liabilities, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or which may be due in damages, shall be admissible as proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency or which are due in damages but not ascertained, or which for some other reason do not bear a certain value. In the winding up of a company the assets of which are insufficient to meet the liabilities, the rights of secured and unsecured creditors and the ranking of their debts will be regulated by law.

Retention of title is regulated in terms of the Commercial Code. An agreement relating to a commercial transaction may include a retention of title in favour of the seller/transferor of goods until payment is made in full. If agreed, therefore, retention of title will be enforceable and therefore the goods concerned will not be deemed to form part of the patrimony of assets available to the company's creditors on an insolvent liquidation. This is assuming, of course, that the agreement is valid and not voidable in terms of other provisions of law (e.g. fraudulent preference – see 5B above).

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

All costs, charges and expenses properly incurred in the winding-up, including the remuneration of the liquidator, will be payable out of the assets of the company in priority to all other claims.

Liquidation expenses are followed by the claims of preferred creditors. Malta does not have a single piece of comprehensive legislation which lists preferential debts and their order of priority. Rather, different preferential debts are found in different pieces of ad hoc legislation. For example, under the Employment and Industrial Relations Act, wages due to employees for a maximum of three months will constitute a privileged claim over the assets of the employer and therefore, will be paid before any other claim of preference, even before any privilege or hypothec. The Social Security Act also provides for privileged claims over the assets of the employer for the social security contributions which are due in relation to the employer's employees. The Income Tax Management Act and the Value Added Tax Act also make income tax and VAT dues privileged claims. Moreover, the Civil Code also provides for other lawful causes of preference which include pledges, privileges, and hypothecs. After the claims of preferential creditors are satisfied, the remaining general body of ordinary unsecured creditors will rank *pari passu* between them.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

In the course of a court winding up, no action or proceeding can be proceeded with or commenced against the company or its property except by the leave of court and subject to such terms as the court may impose. Acts or warrants, precautionary or executive (other than a warrant of prohibitory injunction), issued or carried into effect against the company are void pending the proceedings. Similarly, any disposition of the property of the company, including any rights of action, any transfer of shares, or the alteration in the status of members made after the date of the filing of a winding up application, will be void unless the court orders otherwise.

16. What effect does insolvency proceeding have on pending lawsuits?

In a winding up by the court, any creditor may apply to the court for a stay of judicial proceedings which are pending against the company and the court may grant such an application for such duration and on such terms as it thinks fit.

17. What effect does insolvency proceeding have on current contracts?

Unless deemed to be a fraudulent preference and therefore voidable (please see 5B above), the dissolution of a company will not have an immediate and direct effect on existing contracts other than in relation to the enforcement of those contracts as per questions 15 and 16 above. A liquidator will be expected to terminate existing contracts as part of the winding up process.

18. Under which conditions may set-offs be invoked?

In general terms, legal set-off as regulated by the Civil Code is automatic and operates *ipso iure* when two persons are mutual debtors. Legal set-off will only take place, however, between two debts which have for their subject-matter a sum of money or determinate quantity of fungibles of the same kind and which are both for a liquidated amount and exigible. There are exceptions to the applicability of set-off which include when a demand is made for the restoration of a thing of which the owner was unjustly deprived.

Under the Set-Off and Netting on Insolvency Act, notwithstanding the provisions of any other law, any close-out netting provision or any other provision in any contract providing for or relating to the set-off or netting of sums due from each party to the other in respect of mutual credits, mutual debts or other mutual dealings shall be enforceable in accordance with its terms, whether before or after bankruptcy or insolvency, in respect of mutual debts, mutual credits or mutual dealings which have arisen or occurred before the bankruptcy or insolvency of one of the parties, against:

a) the parties to the contract,

b) any guarantor or any person providing security for any party to the contract

c) the liquidator, receiver, curator, controller, special controller or other similar officer of either party to the contract, and

d) the creditors of the parties to the contract

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Every privilege, hypothec or other charge, or transfer or other disposal of property or rights, and any payment or other act relating to property or rights made or done by or against a company, and any obligation incurred by the company within six months before the dissolution of the company shall be deemed to be a fraudulent preference against its creditors whether it is of a gratuitous nature or an onerous nature if it constitutes a transaction at an undervalue or if a preference is given, unless the person in whose favour it is made proves that he did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency, and in the event of the company being so dissolved every such fraudulent preference shall be void. See also 5B above.

20. What are the rules of the distribution of proceeds?

In an insolvent liquidation, after the liquidation expenses and the claims of preferential creditors are satisfied, the remainder of the proceeds procured by the liquidator in the winding up process will then be made available for distribution to the general body of ordinary unsecured creditors who shall rank *pari passu.* In a solvent liquidation after all creditors have been paid, the liquidator will draw up a scheme of distribution including how he proposes to distribute surplus assets between the shareholders.

21. What are the conditions for and the effects of closure of insolvency proceedings?

When the company's affairs are fully wound up, the liquidator will make an account or report of the winding up and will draw up a scheme of distribution (if any). The documents are laid before the meeting of the company and/or the creditors or the court, as the case may be and are then sent to the Registry which will register same and publish a notice in the Government Gazette and/or the Website maintained by the Registry. Assuming that no objections are received or proceedings instituted, the Registry will strike the name of the company off the register. Once the company is struck of the register, it ceases to exist and may only be revived in limited and specific circumstances.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

When a company is being wound up, this provides the liquidator with the opportunity to take certain actions which could lead to criminal or personal liability of the directors in terms of wrongful trading or fraudulent trading, for example.

23. Are there any special issues to be mentioned for your country?

Note that in terms of the CA, it is possible to 'revive' a company that has been struck off within five years from the date of striking off. In fact, any member or creditor of the company, or any other person who appears to the Court to have an interest and who feels aggrieved by the fact that the company has been struck off, may apply to the Court to 'revive' the company. The Court on an application made by the member or creditor or such other person before the expiry of five years from the publication of the notice of the striking off may, if satisfied that it is proper that the name of the company be restored to the register, order that such name be

restored to the register. In this case, the company will be deemed to have continued in existence as if its name had not been struck off. The Court will usually, by its order, give such directions and make such provisions as seem fit for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. The Registrar must then publish a notice in the Government Gazette or on its website and in a daily newspaper that the company has been restored to the register. Typically, this procedure is resorted to when there it appears that there was a manifest error in the liquidation process or if one or more assets of the Company were omitted from the process and the Court would typically give time for the matter to be rectified before re-ordering the striking off of the company.

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Insolvency and bankruptcy proceedings in Europe

THE NETHERLANDS

1. Who may insolvency proceedings be brought against?

Insolvency proceedings can be brought against natural persons and legal entities.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Apart from the debtor itself, a creditor can file for the insolvency of its debtor. In that case, there should be (at least) two creditors and two different claims.

3. How is a debtor's insolvency officially declared?

The bankruptcy judgement is pronounced by the district court.

4. Where is the declaration of insolvency published? Are there online-registers?

Yes, an extract of the bankruptcy judgement is published in the (electronic) "Staatscourant" a few days after the judgement and, together with other information, registered in the Bankruptcy Register. This register is available at this web address: https://insolventies.rechtspraak.nl/

5. Which different type of insolvency / liquidation proceedings do exist?

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
- **if the opening of the proceeding is published**
- **which is the purpose of the proceeding**
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**

The Dutch Bankruptcy Act (Faillissementswet) entered into force in 1896 and has been amended several times since.

There are three types of insolvency proceedings under the Dutch Bankruptcy Act:

i. Bankruptcy in which the debtor's assets are liquidated to pay the creditors' claims;

ii. Suspension of payments whereby the debtor is given temporary relief against its creditors in order to reorganise and continue its business; and

iii. Debt rescheduling scheme for natural persons in which the debtor's assets are liquidated for the benefit of his creditors and the debtor must make a maximum effort to generate funds to repay his creditors during a three-year period. After this, the debtor is given a fresh start whereby all remaining debts are waived.

All insolvency procedures are court supervised by a supervisory judge and published in the Bankruptcy Register.

Besides these procedures, different creditor agreement procedures exist, both in and out of bankruptcy and both voluntary and forced.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

As soon as the debtor is declared bankrupt, the debtor (and its management) loses the power of disposition over its assets.

The insolvency administrator is responsible for the management and liquidation of the bankruptcy estate. A supervisory judge oversees this and must give prior permission for certain acts of the insolvency administrator.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

(x) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim forever?

Creditors should make sure to file their claims as soon as possible. In case of a creditors hearing, these claims have to be filed no later than 14 days before this meeting. This is a deadline, but it can be adjusted by the supervisory judge.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

( ) Translated to the State's official language

( ) English is sufficient

(x) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

Retention of title is respected in a bankruptcy.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

Claims which arise as a result of or following a declaration of bankruptcy are considered claims against the estate. These claims have to be satisfied in priority to insolvency claims.

In general, all creditors have an equal right to payment and the proceeds of the bankrupt's estate are to be distributed in proportion to the size of their claims. However, there are two groups of creditors *to whom this general rule does not apply:*

a. secured creditors; and

b. creditors who have a preference.

Secured creditors are:

i. creditors who hold a mortgage; and

ii. creditors who hold a right of pledge.

Secured creditors may exclude the collateral from the debtor's estate and execute on their security.

Preferred creditors have a preference by virtue of the Dutch Civil Code or any other relevant Act.

Unsecured and non-preferred creditors do not have any preference and will therefore be paid, if any proceeds of the estate remain, after all other creditors have received payment.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

Bankruptcy is regarded as a general attachment on all of the bankrupt's assets for the benefit of his joint creditors. From the moment bankruptcy is declared, all attachments of the bankrupt's property which benefit specific creditors terminate and are replaced by the general bankruptcy attachment.

16. What effect does insolvency proceeding have on pending lawsuits?

A bankruptcy has the consequence that the procedure (assuming the bankrupt is the defendant and assuming the procedure is not yet up to judgement) is automatically suspended. All the creditor can do in this case, is to submit its claim to the insolvency administrator for verification.

17. What effect does insolvency proceeding have on current contracts?

In principle, a bankruptcy has no consequences for existing reciprocal agreements that were in progress at the time of the bankruptcy. The rights and obligations of the parties are not changed by the bankruptcy. Obligations from agreements must therefore be fulfilled. This premise does not affect the fact that the insolvency administrator must assess whether he has the means and whether it is desirable to fulfil the obligations of the bankrupt under a reciprocal agreement concluded before bankruptcy. The insolvency administrator will generally only execute the agreement if this is in the interest of the estate. The interests of an individual creditor play a minor role in this. This, of course, is quite uncertain for the contracting party of the bankrupt. To annihilate this uncertainty, the contracting party can request the insolvency administrator to declare whether or not he is prepared to keep the agreement. If the insolvency administrator does not declare to fulfil the agreement within the set term, the insolvency administrator can no longer ask for fulfilment of the agreement.

18. Under which conditions may set-offs be invoked?

Set-offs may be invoked if:

i. the creditor of the bankrupt is both a creditor and a debtor of a bankrupt;
ii. both claims have arisen before bankruptcy; or
iii. both claims result from acts carried out before bankruptcy.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

The insolvency administrator has the power to set a legal transaction aside if it is detrimental to the interests of the (joint) creditors of the bankrupt. This is called the actio pauliana. In short, it is a prohibition of preference of one creditor above another. A requirement for such setting aside by the insolvency administrator, is that the legal act is a (new) non-obligatory act and that both the (future) bankrupt and the other party involved in the transaction, ought to have realized that the pertaining transaction would prejudice the other creditors in obtaining redress.

20. What are the rules of the distribution of proceeds?

The distribution of proceeds will follow the ranking of claims and creditors as set out in the answers to questions 13 and 14.

21. What are the conditions for and the effects of closure of insolvency proceedings?

There are five ways in which a bankruptcy can terminate:

i. Cancellation: A bankruptcy can be cancelled by the court through the successful opposition of the debtor, a creditor or an interested third party or by the court of appeal through a successful appeal;

ii. Liquidation; The purpose of liquidation is to distribute the proceeds to the creditors. A bankruptcy will only be liquidated if unsecured creditors will receive at least some payment;

iii. Closing: Closing procedures are followed in cases where there are little or no assets.

iv. Simplified completion: This procedure is used when no payment can be done to non-preferred creditors, but the assets are enough to wholly or partially pay the claims of the tax collector and/or social security administration;

v. Composition: A composition is an agreement between the bankrupt and his creditors which provides for (partial) payment of creditors in full satisfaction of their claims.

If the bankruptcy of a legal entity is terminated, this legal entity will cease to exist. If the bankruptcy of a natural person is terminated due to lack of proceeds, creditors retain their rights.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Yes, both are possible. In some cases, it is possible to hold the director of a bankrupt legal entity personally liable for the debts of this entity. This can be the case if this director did not keep records of his administration and/or if he entered into obligations that he knew or ought to have known his legal entity could not fulfil.

23. Are there any special issues to be mentioned for your country?

The Dutch bankruptcy act is quite complex. It is advised to consult a specialist when coming across matters in this area.

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Insolvency and bankruptcy proceedings in Europe

POLAND

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against both natural and legal persons. Article 6 [Exemptions] par. 1

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Insolvency proceedings may be brought against an insolvent debtor. A debtor shall be presumed to have lost the capacity to meet its pecuniary obligations if the delay in meeting its pecuniary obligations exceeds three months. A debtor who is a legal person shall also be in a state of insolvency where his/her pecuniary obligations exceed the value of his/her assets and the situation persists for more than twenty-four months. A petition for bankruptcy should contain the elements specified in Articles 22 - 25 of the Bankruptcy Law. A petition for bankruptcy may be filed by a debtor himself/herself, his/her personal creditor and other entities listed in Article 20(2) of the Bankruptcy Law.

3. How is a debtor's insolvency officially declared?

Decisions and orders issued in bankruptcy proceedings shall be published in the Central Register of Restructuring and Bankruptcy referred to in Article 5 of the Act of 15 May 2015 - Restructuring Law (Journal of Laws of 2019, items 243 and 326) together with information on the date and manner of lodging an appeal.

4. Where is the declaration of insolvency published? Are there online-registers?

Yes: Monitor Sądowy i Gospodarczy and Krajowy Rejestr Postępowań Upadłościowych.

5. Which different type of insolvency / liquidation proceedings do exist?

There is one type of insolvency proceedings covering also the liquidation of the debtor and four types of restructuring proceedings.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

There are 4 types of pre-insolvency restructuring proceedings. Namely: arrangement approval proceedings, fast arrangement proceedings, arrangement proceedings, reorganisation proceedings.

5.2. Please indicate for each of these proceedings if the proceeding is court supervised, if the opening of the proceeding is published, which is the purpose of the proceeding, if payments made in the framework of such proceeding will be revoked or not in case of future insolvency.

- arrangement approval proceedings - the court does not supervise the proceedings, the debtor enters into a civil-law agreement with the supervisor of the arrangement, the court only issues a decision on approval of the arrangement
- fast arrangement proceedings - the proceedings are held in court, the announcement of the opening of restructuring proceedings is announced in the Register
- arrangement proceedings - the proceedings are held in court, the announcement of the opening of restructuring proceedings is announced in the Register

- reorganisation proceedings - the proceedings are held in court, the announcement of the opening of restructuring proceedings is announced in the Register

These are proceedings aimed at avoiding the debtor's bankruptcy by enabling the debtor to restructure through an arrangement with creditors and, in the case of reorganisation proceedings - also by carrying out so-called reorganisation actions in securing the legitimate rights of creditors. Payments made in the course of restructuring proceedings do not affect subsequent insolvency proceedings.

6. **What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?** Article 75 [Administration Right] § 1

- Decisions: with reasoning 6, without reasoning 75
- Interpretations: 13

As of the date of declaring bankruptcy, the bankrupt shall lose the administration right and the possibility of using the property included in the bankruptcy estate and disposing it. From the day of the declaration of bankruptcy, the debtor's assets shall be administered by the Receiver.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?.

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(X) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

The claim should be filed within thirty days from the date of announcing the decision on bankruptcy in the Register. After the expiry of the time limit prescribed for the filing of claims, the receiver shall complete the list of claims as the claims are filed. However, if the claim is filed after the lapse of the time limit, the Judge-commissioner may oblige the creditor to make an advance payment for the costs related to the filing of the claim after the lapse of the time limit set for filing the claim. If no advance payment is made, the claim shall be refunded. However, if the claim is filed after approval of the final plan for the distribution of the bankruptcy estate funds, it shall be left unprocessed. In the event of a delay in filing a claim, the claim shall not expire. The creditor can pursue the claim in court, however, he/she shall then be charged with the costs of the proceedings.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceeeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

( ) Translated to the State's official language

( ) English is sufficient

(X) Original language is sufficient

( ) The original documents

(X) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

Creditors lodge cash receivables arising before the date of bankruptcy. In addition, a creditor is entitled to lodge a claim if his/her claim was secured by a mortgage, pledge, registered pledge, fiscal pledge, maritime mortgage or other entry in the land and mortgage register.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

The nature of the claim is relevant for the distribution of the bankruptcy estate funds. The costs of proceedings shall be satisfied first and, if the bankruptcy estate funds so permit, also other bankruptcy estate debts, e.g. remuneration of the receiver, social security contributions receivables on account of wages and salaries. Subsequently, claims according to the order of the category of satisfaction, e.g. those from the employment relationship, shall be satisfied.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

The declaration of bankruptcy is followed by suspension of enforcement proceedings and discontinuance of enforcement proceedings. After the date of the declaration of bankruptcy, it is inadmissible to direct enforcement to the assets forming part of the bankruptcy estate and to execute a decision to secure or order security over the assets of the bankrupt, with the exception of securing maintenance claims and claims for pensions for compensation for causing illness, incapacity for work, disability or death and for annuity to be granted in exchange for rights under an annuity agreement.

16. What effect does insolvency proceeding have on pending lawsuits?

Following the declaration of bankruptcy, judicial, administrative or court-administrative proceedings concerning the bankruptcy estate may be instituted and conducted only by or against the receiver. Court, administrative or court-administrative proceedings in a case instituted against the bankrupt before the date of declaring bankruptcy for a claim to be filed

to the bankruptcy estate may be instituted against the receiver only if, in insolvency proceedings, the claim, after the procedure provided for in the Act has been exhausted, is not included in the list of claims.

17. What effect does insolvency proceeding have on current contracts?

Some of the contracts entered into by the bankrupt shall automatically expire on the day the bankruptcy is declared. The most important contracts that expire on the day the bankruptcy is declared include: contracts of mandate or consignment agreements, if the bankrupt was the principal or consignor, agency agreements, contracts of lending for use, if the object was not released, loan agreements, if the object of the loan was not released, credit facility agreements with regard to funds not transferred to the bankrupt, bailment contracts entered into with the bank. However, the declaration of bankruptcy shall not automatically affect the lease agreement concerning the bankrupt's real estate - the agreement is binding on the parties, provided that the real estate has been released to the lessee. However, the receiver may terminate such an agreement with three months' notice, even if it did not provide for such a possibility. The agreement shall be terminated on the basis of a decision of the judge-commissioner if its duration hinders the liquidation of the bankruptcy estate or if the lease rent is understated. The same shall apply to the rental agreement of the bankrupt's real estate and to the lease or rental agreement of the enterprise or its organised part. With regard to other agreements entered into by the bankrupt, which do not have a specific regulation in bankruptcy law, it is up to the receiver to decide whether to terminate the agreement or to continue its performance. This primarily concerns reciprocal contracts. If the (reciprocal) contract on the date of the declaration of bankruptcy has not been performed in whole or in part, the receiver may, with the consent of the judge-commissioner, either perform the contract or withdraw from it. The other party may set a deadline for the receiver to make a statement regarding the withdrawal from the reciprocal contract.

18. Under which conditions may set-offs be invoked?

The set-off of the bankrupt's claim against the creditor's claim shall be permitted if both claims existed on the date of the declaration of bankruptcy, even if the due date of either of them has not yet passed. The total amount of the bankrupt's claim shall be submitted for a set-off, and the creditor's claim shall be submitted only in the amount of the main claim together with interest accrued until the date of the declaration of bankruptcy. A set-off shall not be permitted if the bankrupt's debtor has acquired the claim by way of transfer or endorsement after the declaration of bankruptcy or has acquired it within the last year before the date of the declaration of bankruptcy, knowing that there were grounds for the declaration of bankruptcy. A set-off shall be permitted if the purchaser has become the bankrupt's creditor as a result of the payment of his/her debt for which he/she was personally liable or by certain material objects, and if the purchaser, at the time when he/she assumed responsibility for the bankrupt's debt, was unaware of the existence of grounds for the declaration of bankruptcy. A set-off shall always be permissible if the assumption of liability occurred one year before the date of the declaration of bankruptcy. A set-off shall not be permitted if the creditor has become the bankrupt's debtor after the date of the declaration of bankruptcy. A creditor wishing to exercise his/her right of set-off shall submit a statement to that effect no later than at the time of filing the claim.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Legal actions performed by the bankrupt within a year before the date of filing a petition for bankruptcy, which were used to dispose of the bankrupt's assets, shall be ineffective in relation to the bankruptcy estate, if they were performed free of charge or against payment, but the value of the bankrupt's benefit glaringly exceeds the value of the benefit received by

the bankrupt or reserved for the bankrupt or for a third party. The security and payment of the undue debt made by the bankrupt within six months before the date of filing a petition for bankruptcy shall also be ineffective.

20. What are the rules of the distribution of proceeds?

There are 4 categories of satisfaction in insolvency proceedings. The first group includes, among others, receivables arising in restructuring proceedings from the administrator's actions or receivables arising from the debtor's actions made after the opening of restructuring proceedings. The second group includes other claims if not satisfied in other categories. The third category includes interest on receivables included in the higher categories in the order in which the capital is satisfied, as well as court and administrative fines and receivables on account of donations and legacies. The fourth category includes partners' or shareholders' receivables on account of a loan or any other legal act having similar effects.

21. What are the conditions for and the effects of closure of insolvency proceedings?

The receiver shall prepare and submit to the judge-commissioner the plan for the distribution of the bankruptcy estate funds. The judge-commissioner shall notify the bankrupt and the members of the creditors' committee and announce that the distribution plan may be reviewed at the court registry and, within two weeks of the date of the announcement, objections against the distribution plan may be raised. The judge-commissioner shall approve the distribution plan if no objections have been raised. If any objections have been raised, the distribution plan shall be corrected and approved after the decision of the judge-commissioner on the objections becomes final and if it is challenged - after the court's decision is issued. The court, after the execution of the final distribution plan, shall conclude that the bankruptcy proceedings have been terminated. The court shall also conclude that the bankruptcy proceedings have been terminated, if all creditors have been satisfied in the course of the proceedings.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

The debtor shall be criminally liable for providing false information. He/she shall also be subject to criminal liability if he/she does not deliver to the receiver all the assets forming part of the bankruptcy estate, books of account or other documents relating to his/her assets.

23. Are there any special issues to be mentioned for your country?

There are no such issues apart from the above.

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Insolvency and bankruptcy proceedings in Europe

PORTUGAL

1. Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against any legal entity or individual.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Insolvency may be pursued by the creditors or managers of the legal entity, in the event of a general default of payments, debts or remuneration. Typically, when the entity's liabilities become greater than its assets.

3. How is a debtor's insolvency officially declared?

When the debtor himself, or in the case of legal entities, his managers, have filed for insolvency, the situation shall be immediately considered by the Court, which shall either issue a judgment of the declaration of insolvency or reject the application. On the other hand, in cases where the filing for insolvency is made by any of the creditors, the procedure will be as follows: 1) Debtor is invited to oppose, if he would like to do so; 2) Discussion and judgment hearing; 3) Declaration of insolvency or a decision rejecting the request; 4) Eventually, appeal against the Court decision.

4. Where is the declaration of insolvency published? Are there online-registers?

Yes, there are several online records. The declaration of insolvency is registered in the Civil Registration Office if the debtor is an individual, or in the Commercial Registration Office if it is a company. Also, the bankruptcy is published in the electronic court system platform (*Citius*) and is communicated to the Bank of Portugal.

5. Which different type of insolvency/liquidation proceedings do exist?

Insolvency can work in two ways: either an insolvency plan is submitted, or all the debtor's assets are sold, the proceeds of which are distributed among the various creditors.

5.1. Which types of pre-insolvency/hybrid/restructuring proceedings do exist?

There are two types of restructuring proceedings: The Special Revitalisation Process (PER) and the Special Payment Agreement Process (PEAP).

These two proceedings are aimed at cases where an entity faces severe economic distress, but recovery is still possible. Negotiations between creditors and debtors are therefore promoted in order to reach a payment agreement. The PER applies to companies and the PEAP applies to individuals or non-profit entities.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court-supervised**
  Yes, both cases are filed in and followed by the Court.
- **if the opening of the proceeding is published**
  Yes, in both cases the proceedings are published in the same platforms listed above in 4.
- **which is the purpose of the proceeding**

The purpose of both proceedings is the economic recovery of companies or individuals, as the case may be.

- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  In both cases, the payments made in the framework of PER will not be revoked in case of future insolvency.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The insolvency administrator is the body to which all powers to administer the debtor's assets are vested. In essence, the insolvency administrator takes full control of the insolvency assets, liquidates them and distributes the final proceeds to the creditors. For example, the insolvency administrator also has to draw up an inventory of assets and rights, draw up a provisional list of creditors with their amounts and ranking of claims, submit a proposal for an insolvency plan or reject any proposal for a plan submitted by the debtor.

The management cannot take any day to day act, or ongoing management if in contradiction with the Administrator instructions.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

( ) The creditors themselves or their lawyers

(x) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

(x) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim forever?

Creditors must file their credit claims within 30 days from the public announcement of the declaration of insolvency. The 5 biggest creditors are personally notified of the insolvency and the 30 days are counted from the notification date. In this last case, there is a legal deadline extension of 30 days for a foreign creditor.

Any creditor that was not personally notified of the insolvency may still file an autonomous procedure claiming the credit within 6 months from the insolvency's declaration.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(x) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(x) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

All claims can be filed. It is not required that the credit is previously judicially declared.

Claims can be claimed under condition if the credit is not yet enforceable.

The assets in which retention of title is registered shall not be apprehended to the insolvency estate. If such happens, then the creditor must judicially request the separation of such asset from the insolvency estate.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

Portuguese Insolvency Law establishes four different classes of credits:

Secured (by a mortgage for instance);

Preferential (labour credits, tax credits, etc.);

Non secured (suppliers);

Subordinated (credits held by people especially related to the debtor, interests due after the insolvency's declaration, etc.).

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

The insolvency procedure is a universal enforcement procedure. Therefore, all executive actions that may exist are waived during the insolvency process and are declared extinct at the end of the insolvency process. There is also a prohibition on new executive actions.

16. What effect does insolvency proceeding have on pending lawsuits?

The rule is that all pending lawsuits against the debtor relating to his assets must be united and claimed in the insolvency proceedings. In other words, any rights one has against the debtor with regard to his/her assets should be assessed in the insolvency proceedings. However, if the legal actions are not related to the assets, they should continue their normal procedures.

17. What effect does insolvency proceeding have on current contracts?

The bankruptcy declaration does not suspend the contract's validity. A contract will still be effective up until the Insolvency Administrator terminates it. The counterpart of the contract may settle a reasonable deadline for the Insolvency Administrator to decide whether he intends to fulfil the contract or terminate it. Any debts resulting from a contract that was confirmed by the Insolvency Administrator are considered debts from the insolvency estate and shall be paid preferentially from all other credits by the product of the liquidation.

As far as employment contracts are concerned, the contracts do not terminate automatically with the bankruptcy declaration. It is the Insolvency Administrator who shall decide if and which employees keep their contracts.

18. Under which conditions may set-offs be invoked?

All compensation shall be considered in the context of, and assessed in the context of, the lodging of a claim.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Any acts against the insolvent estate that took place within the two years prior to the date of commencement of the insolvency proceedings may be terminated. For that matter, the acts must be considered to diminish, frustrate, hinder or endanger the satisfaction of creditors. The resolution demands bad faith, which can be assessed in the following situations:

- Knowledge, at the time of the act, that the debtor was in a state of insolvency;

- Knowledge, at the time of the act, that the debtor was in a very difficult economic situation;

- Knowledge, at the date of the act, of the commencement of the insolvency proceedings.

The bad faith is legally presumed if an individual or a company specially related to the insolvent entered into the act that is the terminations' object.

Some situations do not demand the fulfilment of the aforementioned requirements, meaning that the termination is unconditional, such as the following:

Constitution of real liens to guarantee existing obligations within the 6 months prior to the commencement of the insolvency's proceedings;

Constitution of real liens to guarantee new obligations within the period of 60 days prior to the commencement of the insolvency's proceedings;

Any gratuitous act entered into by the insolvent within 2 years prior to the commencement of the insolvency's proceedings.

20. What are the rules of the distribution of proceeds?

The assessment is made according to the graduation on each asset.

With regard to the real estate that is part of the insolvent estate, the credits are graded as follows:

1. Employees' credits (whenever the real estate is part of the productive activity of the insolvent);

2. Taxes related to the real estate (Real Estate Transfer Tax, Property Tax regarding the period of two years prior to the insolvency);

3. Mortgage and respective interests (limited to a 3 years period);

4. Social Security credits;

5. Common credits.

With regard to the movable assets forming part of the insolvency estate, the claims are ranked as follows:

1. Social Security claims;

2. Pledges;

3. Labour claims;

4. Plaintiff's credit who initiates the insolvency proceeding;

5. Common creditors;

In the case of creditors with the same ranking, the distribution is made pro-rata.

21. What are the conditions for and the effects of closure of insolvency proceedings?

The condition for the closure of the insolvency proceedings shall be that the Court issues an order releasing the remaining liabilities.

The effects of the closure of the proceedings shall be:

- The period of 5 years for clearance of non-refundable income begins;

- The Insolvency Administrator ceases functions;

- The debtor recovers rights regarding the administration of his assets;

- The pending executive actions are extinguished.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

If the bankruptcy is considered to be reached due to management' fraudulent act within 3 years prior to the bankruptcy declaration, the management can be condemned to (i) a temporary or permanent disqualification from the practice of commercial activities; (ii) waive any eventual credit before the insolvency estate; (iii) be held personally responsible for any losses of the creditors resulting from its management.

23. Are there any special issues to be mentioned for your country?

N/A.

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Insolvency and bankruptcy proceedings in Europe

ROMANIA

Introduction

The purpose of the insolvency proceedings in Romania is to establish a collective procedure to cover the debtor's liabilities, with the opportunity for the debtor, when possible, to recover its activity.

1. Who may insolvency proceedings be brought against?

The insolvency proceedings may be brought against every professional who operates a business whether for profit or not, namely: companies, natural persons who have the obligation to register with the Trade Registry, Associations and Foundations. Proceedings cannot be brought against liberal professions,

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

The conditions for opening the insolvency proceedings are represented by:

- The existence of a certain debt of at least fourty thousand (40.000) RON;
- The debt must have been outstanding for more than sixty (60) days.

The insolvency can be requested by one or more creditors or by the debtor.

3. How is a debtor's insolvency officially declared?

The insolvency proceeding in Romania is a judicial procedure. Therefore, the insolvency of a debtor is officially declared by a court decision.

4. Where is the declaration of insolvency published? Are there online-registers?

The declaration of insolvency (the decision of the court) is published in the Insolvency Gazette, which can be accessed physically or online, subject to paying a tax / subscription. The operative part of the court's decision can be found for free, online on the Romanian Justice Portal.

5. Which different type of insolvency / liquidation proceedings do exist?

- The general procedure of insolvency, where the debtor's activity can be restructured by a reorganisation plan, without going into bankruptcy. In this procedure the debtor runs its activity under the supervision of the court appointed judicial administrator.

- The bankruptcy, where the debtor cannot run its activity anymore. In this procedure the debtor's assets are inventoried, valuated and sold. The money obtained are used to cover the debts.

Please note that a debtor can go directly into bankruptcy, without applying the general procedure. It can also enter into bankruptcy from the general procedure, in case the reorganisation plan fails to be implemented or accomplished.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

According to Romanian legislation, only pre-insolvency proceedings are possible. These are:

- The *Ad hoc* Mandate
- The Preventive Concordat (a mutual agreement between the debtor and the creditors)

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  All of these proceedings are court supervised.
- **if the opening of the proceeding is published**

- Insolvency proceeding – YES
- *Ad hoc* Mandate – NO
- Preventive Concordat – The agreement is registered with register where the debtor has been incorporated

- **which is the purpose of the proceeding**

- Insolvency proceeding – The purpose of the Insolvency proceedings in Romania is to establish a collective procedure to cover the debtor's liabilities, with the opportunity for the debtor, when possible, to recover its business activity.
- *Ad hoc* Mandate – The purpose of the *Ad hoc* Mandate is to achieve, within 90 days, an agreement between the debtor and one or more of his creditors, in order to overcome the financial difficulty in which the debtor is, to safeguard it's position, and to keep the employees and to cover the debts.
- Preventive Concordat - The purpose of the Preventive Concordat is to overcome the financial difficulty of the debtor by scheduling repayment of its debts for a period of up to twenty-four (24) months, which can be extended by another twelve (12) months.

- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  Theoretically the payments made in the legal framework of any of these proceedings will not be revoked in case of any future insolvency. However, if the specific conditions described at point no. 19 are fulfilled, the payments made in these conditions are susceptible to being cancelled.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

- Within the general procedure of insolvency, if the debtor's right to administrate the business has not been cancelled by the court, the debtor has the power to run its business as usual, but under the supervision of the judicial administrator.

The main prerogatives of the judicial administrator are the following:

a) examining the economic situation of the debtor and the documents submitted and the drafting of a report proposing either the entry into the bankruptcy procedure or the continuation of the observation period in the general procedure

b) examining the activity of the debtor and drawing up a detailed report on the causes and circumstances that led to the insolvency, as well as on the real possibility of reorganizing the activity of the debtor.

c) drawing up the accounting documents of the debtor, if the debtor has not fulfilled its obligation within the legal deadlines, as well as verifying, correcting and completing the information contained in the respective documents, when they were presented by the debtor;

d) drafting the reorganisation plan of the debtor;

e) supervising the operations of managing the debtor's assets;

f) managing the debtor's activity, in compliance with the express specifications of the syndic judge;

g) summoning, chairing and providing the secretariat of the general meetings of the creditors / shareholders;

h) filling actions for the cancellation of fraudulent acts, transfers of assets or operations of the debtor, concluded to the detriment of the rights of the creditors;

i) informing the syndic judge if he finds that there are no assets in the debtor's property or that they are insufficient to cover the procedural expenses;

j) termination of the current agreements concluded by the debtor;

k) verification of claims and drawing up tables of debts;

l) collection of the debtor's rights over third parties;

m) conclusion of transactions, provided that the syndic judge confirms these operations;

n) notifying the syndic judge in relation to any problem that would require a solution by him;

o) inventory of the debtor's assets;

p) arranging for the valuation of the debtor's assets.

- Within the general procedure, if the debtor's right to run the business has been excluded by the court, the debtor is managed by the judicial administrator / liquidator. The debtor's management cannot have any involvement in the business activity. They will only represent the interest of the shareholders.
- Within the bankruptcy procedure the debtor is managed only by the liquidator. The debtor's management do not have any involvement in the business activity. They will only represent the interest of the shareholders.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(X) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

Yes, there is a time limit for the filing of the claims. The deadline is set by the court. The time limit can be extended by the court, at the request of the judicial administrator / liquidator for serious reasons. The extension is opposable by any creditor. A creditor who has not been

given notice by the judicial administrator / liquidator regarding the opening of the insolvency procedure of its debtor can file his claim within 15 days from when he found out about the insolvency of the debtor. If a creditor who has been given notice regarding the insolvency of the debtor fails to file a claim within the deadline set by the court, he will lose his right to claim against the debtor.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(X) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

Any pecuniary claims for recovering a sum from the debtor can be lodged. The retention of title is regulated by the Civil Code and by the parties' mutual agreement. If a retention of title clause is provided in the parties' agreement, it must be respected by the parties, unless it is unlawful or fraudulent.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

Yes. Please see below the ranking of the claims' categories:

1. operational expenses, fees etc.;

2. secured claims (creditor who have a pledge, mortgage over the debtor's assets)

3. receivables from financing granted during the insolvency proceeding;

4. receivables arising from employment relationships;

5. the debts resulting from the continuation of the activity of the debtor after the opening of the procedure

6. tax receivables;

7. claims representing the amounts owed by the debtor to third parties, based on maintenance obligations, allowances for minor or payment of periodic amounts destined to provide the means of subsistence;

8. claims representing the amounts established by the syndic judge for the maintenance of the debtor and his family, if he is a natural person;

9. receivables representing bank loans, with the related expenses and interests, those resulting from product deliveries, services or other works, rents;

10. other unsecured claims;

11. subordinated claims, in the following order of preference:

a) credits granted to a legal person by its shareholders

b) receivables arising from free of charge agreements.

15. What effect does insolvency proceeding have on enforcement proceedings brought by individual creditors?

Any enforcement proceeding brought by individual creditors against the debtor will be suspended. When the insolvency court decision is final, any enforcement proceeding will cease to exist.

Insolvency proceeding do not have any effect on the enforcement proceedings started against the debtor which have other objectives other than debt recovery.

16. What effect does insolvency proceeding have on pending lawsuits?

Any lawsuit started against the debtor for recovery of debts will be lawfully suspended from the date of the insolvency. When the insolvency court decision will be final, the lawsuits will cease to exist.

Insolvency proceeding does not have any effect on the lawsuits started by the debtor against third parties.

Insolvency proceeding does not have any effect on the lawsuits started against the debtor which have other object than debts recovery.

17. What effect does insolvency proceeding have on current contracts?

- The ongoing contracts are considered valid at the date of opening the insolvency procedure. Any contractual clauses for the termination of the contracts in progress for the reason of opening the insolvency are void.
- In order to maximize the value of the debtor's assets, within a limitation period of three (3) months from the date of opening the procedure, the judicial administrator / liquidator may terminate any contract, as long as these contracts were not fully or substantially executed by all parties involved.
- The judicial administrator / liquidator must respond to the contractor's notification, made within the first 3 months from the opening of the procedure, by which he is required to terminate the contract; in the absence of such a response, the judicial administrator / judicial liquidator will no longer be able to request the completion of the contract, which will be considered terminated.

18. Under which conditions may set-offs be invoked?

A creditor can invoke the set-off when the conditions stipulated by the law regarding lawful set-off are fulfilled at the date of opening the procedure. A set-off can also be invoked if the reciprocal claims were both brought within the insolvency procedure.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

According to the legislation, the judicial administrator / liquidator may bring before the syndic judge actions for the cancellation of fraudulent acts or operations of the debtor to the detriment of the creditors' rights, carried out in the 2 years prior to the opening of the procedure.

Namely, the following acts or operations of the debtor may be cancelled:

a) free transfers carried out in the 2 years prior to the opening of the procedure;

b) operations in which the debtor's performance clearly exceeds the one received which was performed in the 6 months prior to the opening of the procedure;

c) agreements concluded in the 2 years prior to the opening of the procedure, which were carried out with the intention of all parties involved to hide the goods from the pursuit by the creditors or to infringe in any other way their rights;

d) transfer of property agreements concluded with a creditor for the settlement of a previous debt performed in the 6 months prior to the opening of the procedure, if the amount that the creditor could obtain in case of bankruptcy of the debtor is less than the amount in the transfer agreement;

e) securing a claim that was unsecured, in the 6 months prior to the opening of the procedure;

f) advance payments of debts made in the 6 months prior to the opening of the procedure, if their maturity had been established for a date subsequent to the opening of the procedure; and

g) transfer agreements performed by the debtor within a period of 2 years prior to the date of the opening of the procedure, with the intention to hide / delay the insolvency status or to defraud a creditor.

These provisions are not applicable to the agreements concluded with good faith, in the execution of a mutual agreement with the creditors, concluded as a result of extrajudicial negotiations for the restructuring of the debtor's debts, provided that the agreement could reasonably lead to the financial recovery of the debtor and does not have the purpose of harming and / or discriminating against certain creditors.

20. What are the rules of the distribution of proceeds?

The shareholders of the debtor are ranked behind all other creditors in the distribution of the proceeds of the bankruptcy. Any distribution they receive is proportional to the shares that they hold in the debtor if there are remaining assets after distribution to other creditors.

21. What are the conditions for and the effects of closure of insolvency proceedings?

An insolvency proceeding can be closed if:

- the reorganisation plan has been successful, and all the claims included into the plan have been paid;
- all the debts mentioned into the table of debts have been paid before a reorganisation plan has been implemented;

- all of the debtor's assets have been liquidated and the sums have been distributed to the creditors;
- the debtor has no assets, or these are insufficient to cover the operational expenses.

The effects of closure of the insolvency proceeding are the following:

- if the reorganisation plan has been successful, the debtor is discharged of the difference between the value of the liabilities he had before the confirmation of the plan and those provided in the plan. The debtor will continue to run its activity.
- if all the debts mentioned into the table of debts have been paid before a reorganisation plan has been implemented, the insolvency proceeding will be closed, and the debtor will continue to run its activity.
- if all of the debtor's assets have been liquidated and the sums have been distributed to the creditors or if the debtor has no assets, or these are insufficient for covering the operational expenses, the bankruptcy proceeding will be closed and the debtor will be delisted from the public registry, thereby ceasing to exist.
- if all the debts are paid within the liquidation, any remained assets will be transferred to the shareholders.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Yes. Any person who caused the insolvency of the debtor by one or more of the following particular actions can become liable and can be obliged to cover the debtor's liabilities:

a) use of the assets of the legal person for their own or another person's benefit;

b) performing business in their personal interest, under the cover of the legal person;

c) ordered for their personal benefit the continuation of an activity that obviously led the legal person to cease of payments;

d) keeping fictitious accounting, making some accounting documents disappear or did not keep the accounts in accordance with the law.

e) diverting or hiding assets of the legal person or fictively increasing its liabilities;

f) using ruinous means to obtain funds for the legal person, in order to delay the cessation of payments;

g) in the month preceding the cessation of payments, paid or arranged to pay in preference to one creditor, to the detriment of the other creditors;

h) any other act committed with intention, which contributed to the insolvency of the debtor.

Regarding the criminal consequences, there are no special criminal offenses provided by the insolvency legislation. The provisions of the Criminal Code or other criminal regulations will be applicable.

23. Are there any special issues to be mentioned for your country?

- The legal persons debtors, which during the last five (5) years have also been subjected to a judicial reorganization plan, cannot be subject to another judicial reorganisation plan.
- Any service provider - electricity, natural gas, water, telephone services or the like - is not entitled, during the observation period and during the reorganization period, to change, refuse or temporarily interrupt such a service to the debtor or his property, if he is a captive consumer, according to the law.
- No interest or penalty of any kind may be added to receivables born before the date of opening the procedure, except for the secured claims.

- The assets sold by the judicial administrator / liquidator, in the exercise of their attributions provided by this law, are acquired free of any charges, such as mortgages, pledges or retention rights, seizures of any kind.

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Insolvency and bankruptcy proceedings in Europe

RUSSIA

1. Who may insolvency proceedings be brought against?

- legal entities
- natural persons
- individual entrepreneurs

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Legal entities: the amount of creditors ' claims is not less than 300 000 rubles (about 4 000 EUR) and not fulfilled more than 3 months / the presence of circumstances evidencing that the debtor is not able to fulfill monetary obligations and (or) the obligation to pay mandatory payments within the established period/ the amount of obligations exceeds the value of property belonging to the debtor / self-liquidation is possible due to lack of funding resources.

Natural persons: the amount of creditors ' claims is not less than 500 000 rubles (about 7 000 EUR) and not fulfilled more than 3 months / the presence of circumstances evidencing that the debtor is not able to fulfill monetary obligations and (or) the obligation to pay mandatory payments within the established period.

For insolvency can ask the debtor, the creditor and their representatives.

3. How is a debtor's insolvency officially declared?

The debtor itself or the liquidation Commission can declare:

- by publishing a notice of intention to apply for recognition of its bankruptcy by including this notice in the Unified Federal register of information on the facts of the activities of legal entities;
- by publishing in official publications: "Vestnik", "Kommersant"

4. Where is the declaration of insolvency published? Are there online-registers?

- Unified Federal Register of Data on Bankruptcy: http://www.fedresurs.ru/
- Unified Federal register of information on the facts of the activities of legal entities
- "Vestnik": www.vestnik-gosreg.ru
- "Kommersant": www.kommersant.ru

5. Which different type of insolvency / liquidation proceedings do exist?

Types of insolvency proceeding:	Types of liquidation proceeding:
- supervision; - financial rehabilitation; - administration; - bankruptcy proceeding; - composition; - restructuring of debts of a citizen; - realisation of property of a citizen.	- voluntary liquidation: expiration of the term and/or achievement of the purpose of creating a legal entity, business restructuring, unprofitability; - compulsory winding-up by the court; - bankruptcy: not able to repay the debts; - reorganisation.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

- supervision;
- financial rehabilitation.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  yes, by court
- **if the opening of the proceeding is published**
  yes, from the moment of beginning of each procedure
- **which is the purpose of the proceeding**
  restitution of the debtor's solvency
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  if it is not possible to restitute solvency in one procedure, the next procedure begins

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The debtor / the debtor's management has the right to apply to the court to declare the debtor as a bankrupt.

The insolvency administrator has a right to:

- exercise the powers and authority of the head of the debtor and other management bodies of the debtor, as well as the owner of the debtor's property;
- dispose of the debtor's property;
- dismiss employees of the debtor including the head of the debtor in a manner and in terms established by the Federal law;
- declare refusal from repudiation of contracts and other transactions;
- submit to the arbitration court on behalf of the debtor an application for invalidation of transactions;
- make demands on third parties who in accordance with the Federal law bears subsidiary responsibility for the obligations of the debtor.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

(X) Other requirements for an individual filing a claim?

- debtor or their lawyers.

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(X) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

- not later than one month after the publication of the notice on the beginning of bankruptcy procedure and implementation of the supervision procedure in regard to the debtor;
- creditors who failed to file an application within the above mentioned period – after the completion of the supervision procedure.

10. A claim must/can be lodged in:

(X) the official language of the concerning State

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

( ) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

(X) Other: only in written form

12. Documents concerning the claim must be...

(X) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

(X) The original documents should be provide to the court during heating

(X) Copies of the original documents are sufficient by filling the claim

13. Which type of claims can be lodged? How do you treat retention of title?

Main claims:

- petition in bankruptcy of the debtor;
- requirement to be included in the register of creditors;
- challenging of the actions (inactions) of the insolvency administrator;
- challenging of the debtor's transactions;
- challenging of the amounts of the expense of the insolvency administrator.

If the creditor retains the title of goods, he has the right to demand the return of the goods from the debtor outside the bankruptcy proceedings. Such goods may not be used to satisfy the claims of other creditors of the debtor.

By the bankruptcy of the seller who retains the title of goods, he may demand the return of the goods from the buyer.

14. How are claims ranked ? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

- monetary claims;
- requirements for non-monetary obligations;
- requirements for payment for labour;
- requirements for current obligations;
- requirements to be included in the register of creditors.

15. What effect does insolvency proceeding have on enforcement proceedings brought by individual creditors?

- arrest of enforcement documents on property recovery;
- removal of arrests of the debtor's property and other restrictions on the disposal of the debtor's property imposed in the course of enforcement proceedings.

16. What effect does insolvency proceeding have on pending lawsuits?

At the request of the creditor, proceedings on cases related to the recovery of funds from the debtor are suspended. The creditor in this case has the right to present its claims to the debtor during the bankruptcy procedure.

17. What effect does insolvency proceeding have on current contracts?

- since the beginning of the bankruptcy procedure, all obligations under the contracts are recognized as having occurred;
- suspension of penalties;
- new contracts on behalf of the company are concluded and executed by the insolvency administrator with the approval of creditors and the court (in certain cases).

18. Under which conditions may set-offs be invoked?

Set-off can be invoked, if it does not violate the priority of satisfaction of creditors' claims, established by law.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

- must not be older than one year in case of an unequal counter-performance of obligations by the other party to the transaction;
- must not be older than three years in case of damage to the property rights of creditors (suspicious transaction);
- there is no need to enter into such transactions;
- priority of satisfaction of creditors' claims is violated.
- the presence of signs of insolvency or insufficiency of the property of the debtor

20. What are the rules of the distribution of proceeds?

- creditors' claims on current payments;
- the demands of the citizens who have suffered harm to life or health;
- claims for severance pay and compensation;
- claims of bankruptcy creditors and authorized bodies;
- requirements for transactions recognized as invalid.

21. What are the conditions for and the effects of closure of insolvency proceedings?

The grounds for termination of bankruptcy proceedings are as follows:

- restoration of the debtor's solvency;
- conclusion of a composition;
- recognition of unfounded claims of the applicant, on the basis of which a bankruptcy case was initiated;
- release of all claims of creditors;
- repayment of all creditors ' claims;
- lack of funds to compensate court costs; Consequences of termination of bankruptcy proceedings:
- termination of all restrictions imposed upon initiation of bankruptcy proceedings;
- termination of the powers of the insolvency administrator.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Cases of criminal responsibility:

- illegal actions in bankruptcy (obstructing to the proper conduct of the bankruptcy procedure; commissions of actions by the debtor in the interests of one creditor);
- premeditated bankruptcy;
- bankruptcy fraud;
- subsidiary responsibility of participants, stockholders, controlling persons, in the case of withdrawal of funds, nonpayment of taxes, wages, fraud, failure to fulfill obligations under the contract.

Cases of civil liability:

- subsidiary liability of the founders (participants), owners of the property of a legal entity or other persons who have the right to give instructions for this legal entity or otherwise have the ability to determine its actions.

Cases of administrative responsibility:

- bankruptcy fraud (applies regardless of criminal);
- illegal actions in bankruptcy (concealment of property, falsification of accounting documents, etc.).

23. Are there any special issues to be mentioned for your country?

There are no any special issues to be mentioned.

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Insolvency and bankruptcy proceedings in Europe

SLOVAKIA

1. Who may insolvency proceedings be brought against?

Bankruptcy proceedings under the legal conditions of the Slovak Republic are a special type of civil procedure in which creditors recover claims against a debtor, that is in bankrupt. A debtor may be a natural person or legal entity. Bankruptcy law provides legal protection for certain entities from the possibility of bankruptcy of their assets. The entities are, namely: state, state budgetary organization, state contributory organization, state fund, municipality, higher territorial unit, budgetary organization and contributory organization in the founding competence of the municipality and higher territorial unit or other person for which all obligations are held or are guaranteed by the state, and also National Bank of Slovakia, Deposit Guarantee Fund or Investment Guarantee Fund.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

In case of the bankruptcy proceedings there are two insolvency tests under the Slovak legislation:

company is deemed illiquid if it is not able to pay its debts that are in arrears for more than 30 days and it has more than one creditor

company is over-indebted if its overdue liabilities exceed its total assets and it has more than one creditor

If the company is illiquid and/or over-indebted, it is deemed insolvent under Slovak law. Bankruptcy proceedings shall be initiated by the company (as the debtor) or may be initiated by its creditor, or by its employees (minimum 5).

In case of the restructuring proceedings the proceedings can be initiated by the company (as the debtor) or by its creditor.

Conditions for initiating a debt relief procedure:

The conditions for the opening of the debt relief procedure are the debtor is natural person (entrepreneur or consumer), the cancellation of bankruptcy proceedings, the filing of the petition by the debtor and his proper performance during the bankruptcy. However, the debtor does not have the right to seek the discharge of his debts if the bankruptcy has been cancelled because the debtor's assets were not even sufficient to settle claims against the estate. Existence of the debtor's insolvency and at the same time his declaration of insolvency, expiration of 10 years after the last debt relief, existence of execution or similar proceedings against the debtor, the debtor must be outside the term of imprisonment.

3. How is a debtor’s insolvency officially declared?

The court that declares the debtor’s insolvency.

4. Where is the declaration of insolvency published? Are there online-registers?

The **bankruptcy proceedings and restructuring proceedings** start officially with the resolution of the court which is published in the Company Gazette (in Slovak: “*Obchodný vestník*”). The date of publication is also the starting date of the period during which creditors may submit their claims on receivables against the company.

The Register of bankrupts (Register úpadcov) is an information system of the public administration accessible on the website of the Ministry of Justice of the Slovak Republic, whose administrators and operators are the Ministry.

5. Which different type of insolvency / liquidation proceedings do exist?

Bankruptcy proceeding, debt relief procedure, restructuring.

5.3. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

Restructuring proceeding

5.4. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  YES
- **if the opening of the proceeding is published**
  YES
- **which is the purpose of the proceeding**
  Bankruptcy can only deal with the legal consequences of a critical economic situation and can create mechanisms that allow the legal consequences of bankruptcy to be settled by the court at an early stage. In particular, this will ensure that the consequences of bankruptcy do not increase and endanger the persons concerned, in particular creditors. Debt relief: Any insolvent debtor who is a natural person is entitled to seek debt relief by bankruptcy or repayment schedule, regardless of whether it has business obligations. Restructuring is a recovery process in which an entrepreneur releases part of his debts and continues his business.
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  yes certain payments may be challenged

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The debtor powers are transferred to the trustee. The debtor may challenge others creditor´s claims, if registered.

In general, the trustee during the insolvency procedure administers the assets subject to bankruptcy, monetizes the assets subject to bankruptcy and satisfies the bankrupt's creditors from the proceeds from the liquidation of these assets; the bankrupt's authority to dispose of the assets subject to bankruptcy and the authority to act as bankrupt in matters relating to such assets by bankruptcy shall pass to the trustee; the trustee shall act in the name and on behalf of the bankrupt. In some cases of insolvency proceedings, this may apply differently.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

(X) Submitted to administrator - Declaration sent via certified mail

(X) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(X) Claim should be submitted through court and trustee in Bankruptcy proceeding

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

In general, there is a legal period of 45 days to register claims. If the creditor delivers the application later, the application shall be taken into consideration, but the creditor cannot exercise the right to vote in the meeting of creditors. The right to proportional satisfaction of the creditor shall not be touched but it can be satisfied only from the gains put into the schedule from the general property. In the case of a secured claim, the application delivered to the trustee must also duly and timely exercise the collateral, within a basic registration period of 45 days from the date of declaration of bankruptcy, otherwise it will expire. In the restructuring procedure the period is 30 days. Any claim delivered after the expiration of the term shall be disregarded within the framework of the restructuring proceedings and the claim enforced thereby shall not be included in the Restructuring Plan.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(X) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

(X) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

In bankruptcy proceeding

In general all secured and unsecured claims against the debtor can be lodged.

If the debtor has sold an item with retention of title and delivered it to the buyer before bankruptcy is declared, the buyer may either return the item or insist on proceeding with the contract. If, before bankruptcy is declared, the debtor purchases and takes receipt of an item with retention of title, the seller cannot seek the return of the item provided that the insolvency

practitioner fulfils obligations under the contract without undue delay after being invited to do so by the seller.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

The property which is liable to the bankruptcy shall made up a bankruptcy estate, which shall be split between:

- general bankruptcy estate
- individual separate bankruptcy estates of secured receivables (receivables for example secured by the pledge over the specific asset).

The creditors are satisfied by the funds which were converted by the sale of the assets from the respective group.

In general, the receivables are satisfied in the following order:

- costs of the insolvency procedure which include mainly costs of selling the assets, fee of the trustee
- alimony
- employees´ wages and other claims of employees that arose after the bankruptcy was declared
- taxes, duties, health insurance payments, social insurance payments and other contributions to the state
- other claims.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

In general in insolvency proceedings the enforcement proceedings or execution proceedings cannot be initiated for bankrupt assets; enforcement proceedings or enforcement proceedings already commenced are suspended by the declaration of insolvency. In some cases of insolvency proceedings, this may apply differently.

16. What effect does insolvency proceeding have on pending lawsuits?

In general the insolvency proceedings suspend all legal and other proceedings, deadlines do not expire. In some cases of insolvency proceedings, this may apply differently.

17. What effect does insolvency proceeding have on current contracts?

In general, the trustee is entitled to terminate any contracts concluded by the debtor. The trustee can terminate the lease agreement only under the conditions laid down by the Civil Code. Contracts concluded under the Labour Code have different rules of termination.

18. Under which conditions may set-offs be invoked?

Claim which arose to the bankrupt after the declaration of bankruptcy cannot be set off against the debtor's mutual claim which arose before the declaration of bankruptcy; the same applies to conditional claims which are filed in bankruptcy by application. Claim not filed in the manner stipulated by Act No. 7/2005 Coll., a filed claim acquired by transfer or passing after the declaration of bankruptcy and a claim acquired under a counter claimable legal act cannot be offset against any insolvency claim. No claim can be set off against a claim for failure to file

a bankruptcy petition on behalf of the debtor. Offsetting of other claims is not excluded. In some cases of insolvency proceedings, this may apply differently.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

The trustee and creditors have the right to oppose a legal action against payments etc., The right to oppose a legal action shall expire within one year of the declaration of the bankruptcy. It is also possible to oppose a legal action from which claims are already enforceable or satisfied. In some cases of insolvency proceedings, this may apply differently.

20. What are the rules of the distribution of proceeds?

In bankruptcy: The distribution of proceeds in bankruptcy differs from the type of creditors (secured creditors, unsecured creditors, creditors of subordinated debt, contractual penalties and claims of creditors that are related to the bankrupt). Distribution of proceeds in bankruptcy is on the basis of a proceeds schedule.

In restructuring and debt relief by repayment plan no distribution of proceeds takes place.

In debt relief by bankruptcy: The trustee shall prepare the proceeds schedule without undue delay after the liquidation of the bankruptcy estate and the termination of all disputes that may be affected by the proceeds schedule, but not earlier than 60 days after the bankruptcy was declared. The intention to draw up a schedule is announced by the trustee in the Company Gazette.

21. What are the conditions for and the effects of closure of insolvency proceedings?

The objective of the bankruptcy proceedings is the liquidation of the debtor and the distribution of its assets. The trustee shall converse all the property of the company to funds in cash with the aim to satisfy the creditors. The proceeds from the sale of property shall be released to creditors holding proven claims, under a Distribution Scheme, which of course shall be approved by the respective body in the bankruptcy proceedings, respectively by the court.

In the restructuring proceedings, a Restructuring Plan is prepared which includes two main sections: the descriptive part and the binding part which is crucial as it contains a specification of all rights and obligations to be constituted, altered or expired with respect to participants of the Restructuring Plan, such as prolongation of maturity, partial expiration of the obligations or instalments schedule.

The Restructuring Plan shall be approved by the creditors at the approval meeting and ratified by a decree of the course, once it was approved by the creditors.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Company as the debtor is obliged to file a proposal for the **bankruptcy order** within 30 days since it knew or while maintaining due diligence should have known of its status. This obligation on behalf of the company (as debtor) has mainly the statutory body as well as the member of the statutory body of the company.

For the **event of breach of the obligation** to file a proposal for the bankruptcy in time, there is a fiction stipulated by the law, that between the company and the person obliged to file the proposal for the bankruptcy a contractual penalty in the amount of EUR 12.500 is negotiated (equal to the half of the lowest value of the basic capital for a joint-stock company).

II. Disqualification of the member of the statutory body to execute the function of the statutory

If the court decides that the person breached the obligation to file a proposal for the **bankruptcy** in time and therefore the person is obliged to pay the contractual penalty as described above, the person will be disqualified by the court to be a member of the statutory body of the company (as debtor) and also of other companies and the prohibition can be up to 3 years.

Further the person will be registered in the state Registry of Disqualification which is a public registry operated by the district court.

III. Criminal offenses on the side of the company (debtor)

There are several relevant criminal offenses according to Slovak Criminal Code concerning acting in insolvency status or in respect of the **bankruptcy or restructuring** proceedings.

23. Are there any special issues to be mentioned for your country?

No

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Insolvency and bankruptcy proceedings in Europe

SLOVENIA

Insolvency and bankruptcy proceedings are in Slovenia regulated by Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (Official Gazette of RS, No. 126/07 and later amendments), which was adopted in 2007 and was subject to numerous amendments. As the regulation of Insolvency and bankruptcy proceedings is very complex the answers below represent general legal guidance, which is in many cases subject to exceptions.

1. Who may insolvency proceedings be brought against?

Against the natural persons (entrepreneur or not) and the legal entities. Additionally, in Slovenian also bankruptcy proceeding of an estate is regulated.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Insolvency proceedings against a debtor can be initiate if a debtor:

- is in an extended period of time not able to settle all his liabilities falling due within such period of time (hereinafter: continuous insolvency);
- becomes insolvent

Application to start an insolvency proceeding can be filed:

- in case of a legal entity by debtor, personally liable shareholder and by a creditor;
- in case of a natural person by debtor, by a creditor and by certain social security funds.

3. How is a debtor's insolvency officially declared?

It is the court that declares the debtor's insolvency.

4. Where is the declaration of insolvency published? Are there online-registers?

Insolvency is published at the

court register;

business register;

primary register, which is regulated by a special act and which regulates the legal form of the debtor, who is subject to entry in the primary register.

Public database: https://www.ajpes.si/?language=english

5. Which different type of insolvency / liquidation proceedings do exist?

Insolvency proceedings are be the following:

- compulsory settlement proceedings;
- simplified compulsory settlement proceedings; and

bankruptcy proceedings:

- bankruptcy proceedings against a legal person,
- personal bankruptcy proceedings (and Remission of liabilities of a debtor in bankruptcy)

- bankruptcy proceeding of an estate.

Compulsory dissolution proceedings are the following:

- cancellation from the court register without liquidation; and
- compulsory liquidation.

Additionally, the Companies Act (Official Gazette of RS, No. 65/09 and later amendments) regulates voluntary dissolution proceedings:

- regular dissolution proceedings; and
- fast track dissolution proceedings.

5.5. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

Preventive restructuring proceeding.

5.6. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  All proceedings are more or less court supervised but in some instances the court may have a marginal role (e.g. voluntary dissolution proceedings).
- **if the opening of the proceeding is published**
  Yes.
- **which is the purpose of the proceeding**
  Compulsory settlement proceedings is conducted to implement the financial restructuring of a debtor's undertaking the purpose of which is to ensure that:

  1. the debtor's current company members may keep only such a proportion of the debtor's share capital that corresponds to the value of the debtor's residual assets which the debtor's company members would receive if bankruptcy proceedings were initiated for the debtor;
  2. the creditors are provided with conditions for repayment of their claims that are more favourable than those in bankruptcy proceedings initiated against the debtor, taking into account the order of precedence and other rules for repayment of priority, ordinary and subordinate claims and secured claims in bankruptcy proceedings;
  3. continued operations of the debtor's undertaking or the profitable part of such undertaking.

  Simplified compulsory settlement proceedings: intended for small businesses in order to enable them an effective and simple financial restructuring.

  Bankruptcy proceedings against a legal person: intended to secure equal (proportionate) payment of creditors claims.

  Personal bankruptcy proceedings: Personal bankruptcy proceedings are conducted in order to ensure that all creditors receive, at the same time and in equal portions, payments of their ordinary claims against the debtor in bankruptcy from the assets of the debtor in bankruptcy. Claims of creditors shall in part, in which they are not paid from the distribution estate of the debtor in bankruptcy, not terminate and may be exercised by the creditors against the debtor in bankruptcy also after the termination of bankruptcy proceedings, unless otherwise provided for by an Act.

  Remission of liabilities of a debtor in bankruptcy: The purpose of remission of liabilities is to provide for the termination of liabilities of an honest and conscious debtor in bankruptcy, in part in which the debtor in bankruptcy is not capable of fulfilling from its assets, as of the

date of the initiation of personal bankruptcy proceedings or acquired during personal bankruptcy proceedings until the expiry of the trial period.

Bankruptcy proceeding of an estate is conducted to ensure that all creditors receive, at the same time and in equal portions, payments of their ordinary claims against the deceased from his/her estate.

Cancellation from the court register without liquidation is intended to remove non-functioning legal entities.

Compulsory liquidation is intended for cashing in all assets of a company and consequently to repay all existing debts of the company, the remainder s is distributed to the shareholders. As a final result the company is erased from the court register.

Preventive restructuring proceedings is conducted for the purpose of enabling the debtor, who shall most likely become insolvent within a one-year period, to impose certain measures for the restructuring of its financial obligations based on the agreement on financial restructuring as well as other financial restructuring measures, which shall be deemed necessary to eliminate the causes due to which the debtor could become insolvent.

- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**

  Payments made in accordance with the compulsory settlement cannot be revoked in case of a future bankruptcy proceeding.

  What is more, if not all claims of creditors have been paid in total pursuant to the confirmed compulsory settlement, creditors who have received payments for their claims pursuant to the confirmed compulsory settlement are not obliged to return the amounts received, and such amounts can also not be rebutted under the rules on rebutting the debtor's legal actions.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

It depends on the type of proceedings. In general, it can be stated that the insolvency administrator is obliged to perform its competences and tasks with the aim of protecting the interests of creditors. The debtor/the debtor's management are inter alia obliged to provide the insolvency administrator with all relevant documentation and information.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(x) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(x) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

In compulsory settlement proceedings, a creditor must file a claim against an insolvent debtor within one month following the publication of the notice of initiation of such proceedings. It cannot be extended. If the creditor misses the time limit for filing the claim, creditor's claim in relation to the debtor shall not terminate, however the creditor shall not be entitled to perform legal acts within the compulsory settlement proceedings.

In bankruptcy proceedings, a creditor must file a claim against an insolvent debtor within three months following the publication of the notice of initiation of such proceedings. It cannot be extended. In general, if the creditor misses the time limit for filing the claim, creditor's claim in relation to the debtor in bankruptcy shall terminate and the court shall reject the late filing of the claim.

10. A claim must/can be lodged in:

(x) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

( ) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

(x) Other: written proof of claim is not mandatory (however preferable), as creditors can prove the existence of claims with other evidence.

12. Documents concerning the claim must be...

(x) Translated to the State's official language (preferable, however not mandatory)

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

(x) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

Types of claims that can be lodged:

- secured and unsecured claims;
- monetary and a non-monetary claim;
- Priority, subordinated and ordinary claims;
- Exclusion right;
- A right to a separate satisfaction.

In bankruptcy proceedings a retention of title gives a creditor the right to a separate satisfaction (The right to a separate satisfaction, is the right of a creditor that his claim is paid from certain assets of the insolvent debtor before claims of other creditors are paid from such assets).

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

Claims shall be paid from the common distribution estate in the following priority order:

priority claims (salaries and wage compensations, compensations for accidents related to work for the debtor, and occupational diseases, etc.)

ordinary claims,

subordinated claims.

As long as the distribution estate is insufficient for the full repayment of claims of the preceding payment priority order, which should be considered at distribution, claims of the lower payment priority shall not be paid.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

In general: After an insolvency proceeding is initiated, issuing an order on execution or securing against the insolvent debtor shall not be permitted. The enforcement or collateralisation proceedings commenced against the insolvent debtor prior to the commencement of compulsory settlement proceedings shall be suspended on the commencement of the compulsory settlement proceedings. In such case legal consequences depend mainly from the question, whether or not the creditor has in the enforcement or collateralisation proceeding obtained a right to a separate satisfaction before the insolvency proceeding was initiated. If the answer is negative, then the enforcement or collateralisation proceeding is stopped.

16. What effect does insolvency proceeding have on pending lawsuits?

Court civil proceedings are temporarily suspended and continue after the insolvency administrator takes over the proceeding at hand.

17. What effect does insolvency proceeding have on current contracts?

With the beginning of the insolvency proceeding insolvency administrator is entitle to terminate mutually unfulfilled bilateral contracts, however court endorsement for termination is required. Special regulation is foreseen for qualified financial contracts, offset arrangements and other specified qualified contracts.

18. Under which conditions may set-offs be invoked?

In general, if on the initiation of compulsory settlement proceedings/bankruptcy proceedings there is a coexistence of a claim of an individual creditor against the insolvent debtor and a counterclaim of an insolvent debtor against such creditor, such claims shall be, upon the initiation of compulsory settlement proceedings/bankruptcy proceedings, considered as offset.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

In general, a legal action of the debtor in bankruptcy, carried out within the refutability period (i.e. from 12 months from filling of application for initiation of bankruptcy proceeding till initiation of the bankruptcy proceeding) shall be rebuttable:

1. if the consequences of such action are:
- either a decrease in the net value of assets of the debtor in bankruptcy, so as to enable other creditors to receive payment for their claims in a smaller portion than if the action had not been done,

- or a person to the benefit of whom the act has been executed, has acquired more favourable payment conditions for a claim against the debtor in bankruptcy, and

2. if a person to the benefit of whom the act was executed, at the time when such act has been executed, was aware of, or should have been aware of, the fact that the debtor was insolvent.

A legal action of a debtor in bankruptcy on the basis of which another person has come into possession of the debtor's assets without being liable to execute its counter-fulfilment, or for a counter-fulfilment of small value, shall be rebuttable irrespective of the satisfaction of the condition provided for in point 2 above (in this case the refutability period is at 36 months).

20. What are the rules of the distribution of proceeds?

Claims shall be paid from the common distribution estate in the following priority order:

- priority claims;
- ordinary claims;
- subordinated claims.

As long as the distribution estate is insufficient for the full repayment of claims of the preceding payment priority order which should be considered at distribution, claims of the lower payment priority shall not be paid.

If the distribution estate is insufficient for the full repayment the claims of an individual priority order which should be considered at distribution, all claims of such priority order shall be paid in the portion calculated as a ratio of the available amount of distribution estate to the total amount of all claims of such priority order which should be considered at distribution.

The special distribution estate, which is subject to rights to a separate satisfaction, shall be in general used for repayment of rights to a separate satisfaction. In case of a potential leftover of the special distribution estate, then such leftover is added to the common distribution estate.

21. What are the conditions for and the effects of closure of insolvency proceedings ?

Bankruptcy proceeding: If the value of the bankruptcy estate is insignificant or is insufficient to cover even the costs of the bankruptcy proceedings, the court shall, on petition by the receiver and on the basis of the opinion of the creditors' committee, decide that bankruptcy proceedings should be terminated without executing distribution to creditors (the court renders a decision on the termination of bankruptcy proceedings without distribution to creditors).

Otherwise the distribution estate is sold/cashed in and the claims of creditors are (proportionally) paid. The insolvency administration adopts a final report and the court then renders a decision on conclusion of the bankruptcy proceeding.

The debtor is as a final result erased from the court register.

Compulsory settlement proceeding: The required number of votes of the creditors must vote for the adoption of the compulsory settlement. The court then renders a decision on confirmation of the compulsory settlement.

A confirmed compulsory settlement shall have effect for all claims of creditors against the debtor incurred as from the initiation of compulsory settlement proceedings, regardless of whether the creditor has filed such claim in compulsory settlement proceedings (a confirmed compulsory settlement shall in general not any effect on secured claims, priority claims and exclusion rights). A court ruling or a decision of another state body, issued before the final decision on confirmation of compulsory settlement which decided on a claim affected by the

confirmed compulsory settlement shall lose the power of executory title against the insolvent debtor to the extent to which the creditor's right to enforce the payment by legal action terminates. If the court or another competent state body, after the final decision on confirmation of compulsory settlement in a procedure against an insolvent debtor or guarantees decides on a claim, which is affected by the confirmed compulsory settlement and which has not been established in compulsory settlement proceedings, and assesses that such claim exists, the court shall by a decision:

- establish the existence of the total amount of the claim as of the initiation of compulsory settlement proceedings and
- order the insolvent debtor to pay the claim in the portion, within the time limits and with the interest determined in the confirmed compulsory settlement.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

The flowing liabilities are foreseen in Slovenian legislation:

- Civil personal liability of members of the management board and members of the supervisory board and of the insolvency administrator under the conditions stipulated by the law;
- Criminal liability is also possible under the conditions stipulated by the law.

23. Are there any special issues to be mentioned for your country?

As the legislation regulating the insolvency proceedings is very (too) complex and very (too) comprehensive and consequently in many areas ambiguous/unclear, it is in many cases difficult to provide clients with exact and completely reliable legal guidance.

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Insolvency and bankruptcy proceedings in Europe

SPAIN

1. Who may insolvency proceedings be brought against?

Against the natural persons (entrepreneur or not) and the legal persons (companies, associations, foundations…).

2. What are the conditions for opening insolvency proceedings?

Being in a situation of default on payment, in a continuous way, and being unable of fulfil its obligations.

3. How is a debtor's insolvency officially declared?

When the debtor doesn't pay the corresponding taxes in a period of 3 months, or fails to pay 3 months of social security contributions or when the debtor doesn't pay its workers for a period 3 months.

4. Where is the declaration of insolvency published? Are there online-registers?

The declaration of insolvency will be published in the Official Gazette of the State "BOE", which does also have an online registry, called the Public Insolvency Registry that depends on the mercantile registers.

5. Which different type of insolvency / liquidation proceedings do exist?

The different types of insolvency and liquidation proceedings are:

a) Voluntary, requested by the debtor himself. You must justify your indebtedness and your insolvency status.

b) Obligatory, at the request of the debtor and any of its creditors.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The administrator of the company nor the debtor give up their capacities during the insolvency proceedings, only in certain cases the judge may agree to remove those capacities.

7. Who may raise a claim in the case of a debtor's insolvency/liquidation?

Only their lawyers and the respective procurators can raise a claim in the case of insolvency or liquidation.

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

(X) other: The claim must be filed through the court, in case of a natural person they can request bankruptcy mediation.

9. Does a time limit for the filing of claims exist?

Yes,

A) Communication of the credit

In accordance with articles 21.1.5º and 85.1 LC they have a period of 1 month (reduced to 15 days if the bankruptcy is abbreviated) from the day following the publication in the BOE of the insolvency declaration to inform the insolvency administration of the existence of their claims.

B) In case of claim to the insolvency administrator for lack of inclusion of credit they have 10 days, from notification to the creditors or publication in the Public Insolvency Registry.

10. A claim must/can be lodged in:

(X) the official language of the concerning State.

( ) English.

( ) Creditor's language.

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

although the bankruptcy administration must automatically recognize the credits that result from the books and documents of the debtor or that for any other reason appear in the contest. There are many occasions in which the documentation does not show the existence of certain credits, which consequently will not be included in the Administration's report. Therefore, it is essential that each creditor communicates personally and through the channels indicated in the writ of declaration of the bankruptcy his debt, providing the supporting documentation of the same.

( ) Only if a dispute arises.

( ) Other:

12. Documents concerning the claim must be...

(X) Translated to the State's official language in according with the art. 219.2 LC.

( ) English is sufficient.

( ) Original language is sufficient.

( ) The original documents.

( ) Copies of the original documents are sufficient.

13. Which type of claims can be lodged?
We must distinguish two phases:

1- Communication of the credit within one month of the publication of the contest, which is not to be confounded with an official writ of summons.

2- In case of non-recognition, they can file a lawsuit within 10 days from the communication to the creditors or publication in the Public Insolvency Registry.

14. How are claims ranked?

The classification is not recorded, it only depends on the type of credit, privileged, ordinary or subordinated.

15. What effect does insolvency proceeding have on enforcement proceedings brought by individual creditors?

Once the bankruptcy is declared, the creditors will be integrated in the passive mass of the bankruptcy and, in general, will not proceed to offset the credits and debts with the insolvent party.

- It prevents the interposition of amount claims and any other proceedings that the judge of the insolvency has to have knowledge of. In the event that a claim is filed before a Civil or Social Judge other than the one who has knowledge of the insolvency, the latter must abstain, with nullity of their actions, warning the parties to exercise it before the judge of the insolvency.
- Singular, judicial or extrajudicial compulsory executions may not be initiated, nor may administrative or taxation be applied against the debtor's assets.
- The accrual of interest is suspended, except for credits with real guarantee and salary.
- Sole exception of creditors with real guarantee in assets of the insolvent may start compulsory execution after one year from the declaration of insolvency, provided that the liquidation had not been opened or an agreement with the creditors had been approved.

16. What effect does insolvency proceeding have on pending lawsuits?

If there are declaratory judgments pending at the date of the declaration of insolvency, they will continue until a verdict is reached. There exists a possibility of accumulating to this type of procedure, in case they fall within the competence of the Judge of the insolvency, and it is understood that the resolution has importance for the formation of the inventory or the list of creditors.

17. What effect does insolvency proceeding have on current contracts?

As a general rule, the current contracts are not affected, producing all its effects. However, it may be requested by the insolvent or the Insolvency Administration the termination of the contract in the interest of the insolvency.

If they are obligated to lending, they are considered debts of the mass, not subject to the solution of the insolvency proceeding.

If they opt for the resolution, the effects of restitution, compensation and damages will be charged to the mass of the insolvency proceeding.

18. What effect does insolvency proceeding have on debtor’s employees?

In relation to the question raised, all labor contracts remain in force; legal workers representatives may request before the Commercial Court any modification, termination or suspension by the insolvency administration in accordance with art. 64 LC.

Regarding the contracts of senior management, the Insolvency Administration may suspend or even terminate such contracts on own initiative or at the insistence of the insolvent debtor.

However, the Insolvency Administration has the power to request from the Judge of the insolvency the postponement of the payment of compensation until the final evaluation of the judgment.

19. Are there special remedies to secure employee's right to salary?

(X) Wage guarantee fund, FOGASA in case the company is left without assets to cover the debts with the following limits:

- Amount resulting from (2 times · Minimum Interprofessional Salary per day) · the number of working days pending of payment, which, at most, can be 20 days.
- The maximum limit of compensation will be one annuity and the daily salary cannot exceed twice the SMI, including the proportional of the extra payments.

(X) Priority over secured claims would be considered as credits against mass of the 3 days immediately prior to the declaration of the insolvency

( ) Priority over unsecured claims

( ) Insurance system

( ) None

( ) Other:

20. Under which conditions may set-offs be invoked?

There is no compensation after the declaration of insolvency, except:

1- That the Law of Credit allows it.

2- The compensation for debts prior to the declaration of insolvency.

The conditions that may be invoked are homogeneity, enforceability, maturity, liquidity and reciprocity, that is to say, that both subjects must be debtors and creditors, which must be accumulated at a time prior to the declaration of insolvency.

21. What are the conditions of contesting transactions entered into prior to the opening of insolvency proceeding?

All operations carried out in the two years prior to the declaration of bankruptcy, art. 71 LC.

22. What are the rules of proceeds distribution?

The rules of the distribution of proceeds are:

1- Paying debts/credits against the masses

- Bankruptcy administrator's fees
- Debts subsequent to the declaration of bankruptcy

2- Privileged credits

3- Ordinary credits

4- Subordinated credits

23. What are the conditions for and the effects of closure of insolvency proceedings?

There are two of them:

1- The convention

2- The liquidation

24. Could there be other civil or criminal consequences of insolvency or liquidation?

Yes,

1- There is civil liability in case of culpable insolvency, not in the case of fortuitous insolvency.

2- The insolvency does not offer coverage/nor exonerates/exempts/ prevents the criminal actions.

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Insolvency and bankruptcy proceedings in Europe

SWITZERLAND

1. Who may insolvency proceedings be brought against?

Companies (public limited company, limited liability company, cooperative, association, foundation), owner of a sole proprietorship, member of a collective company etc.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

An open claim detained in a judgment against a debtor which is ruled under insolvency proceedings (see question 1). Every creditor of such a claim can ask for insolvency. The enforcement procedure must be completed before the insolvency proceedings can start.

3. How is a debtor's insolvency officially declared?

It is registered in the commercial register.

4. Where is the declaration of insolvency published? Are there online-registers?

It is published in the Swiss Official Gazette of Commerce and in the commercial register.

5. Which different type of insolvency / liquidation proceedings do exist?

There are two different types of insolvency / liquidation proceedings: the ordinary and the summary (if there is not enough assets to execute the ordinary proceeding).

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

There are two different restructuring proceedings: an out of court agreement and an in-court-proceeding.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  Only the in-court-proceeding is supervised.
- **if the opening of the proceeding is published**
  Only the in-court-proceeding is published.
- **which is the purpose of the proceeding**
  To avoid an insolvency.
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  No, such payments won't be revoked.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

The insolvency administration has to procure all transactions belonging to the preservation and utilization of the mass; it represents the crowd in court.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

( ) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator

Declaration sent via certified mail

(X) Submitted to administrator

Free method of delivery, but creditor bears the burden of proof

( ) Claim should be submitted through court

( ) other:

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

The insolvency administration sets a deadline for filing of claims. It can be extended. In any case the claims have to be filed before the bankruptcy procedure is completed.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(X) Translated to the State's official language

( ) English is sufficient

( ) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

All types of claims can be lodged.

A restitution to the creditor is possible if retention of title has been entered in the register before the bankruptcy. Otherwise issuance by means of segregation petitions to insolvency administration.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

There are 3 classes:

First class are employees' claims arising out of employment relationships that have arisen or become due no sooner than six months before the bankruptcy was opened and family law maintenance and support claims.

Second class are replacement claims of the child from the administration of his entrusted property if the bankruptcy was published during the parental administration or within one year after its end (child privilege) and certain social insurance contributions.

Third class are all other claims.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

Pending enforcement proceedings are rescinded.

16. What effect does insolvency proceeding have on pending lawsuits?

They are rescinded respectively suspended in general.

17. What effect does insolvency proceeding have on current contracts?

The insolvency office decides if they are terminated.

18. Under which conditions may set-offs be invoked?

In the insolvency of the debtor, the creditors can offset their claims, even if they are not due. Set-off is excluded though if a debtor of the insolvency party becomes its creditor only after the opening of the insolvency procedure, unless he has fulfilled a previously entered obligation.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

Donations and gratuitous dispositions, with the exception of customary occasional gifts, made by the debtor within the last year prior to bankruptcy, are contestable. Also contestable are the following acts if the debtor made them within the last year before the insolvency in case he was already over – indebted: ordering securities for existing liabilities that the debtor was not previously required to secure; repayment of a debt other than by cash or other customary means of payment; payment of a non-expired debt.

20. What are the rules of the distribution of proceeds?

Before the proceeds are distributed all costs concerning the procedure have to be paid fully. If there are not enough proceeds to pay all claims the creditors get a loss certificate for their uncovered claim respectively the uncovered part of it.

21. What are the conditions for and the effects of closure of insolvency proceedings?

After the distribution of all proceeds the insolvency procedure is closed by the court. The debtor is deleted out of the commercial register (if it was listed in it) and does no longer exist (if it is a legal person).

22. Could there be other civil or criminal consequences of insolvency or liquidation?

Credit balances of the debtor can be paid with debt-discharging effect only to the insolvency office.

Anyone who owns debtor's property as a pledgee or for other reasons must immediately register with the insolvency office and make the property available to this office.

23. Are there any special issues to be mentioned for your country?

No.

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Insolvency and bankruptcy proceedings in Europe

TURKEY

1. Who may insolvency proceedings be brought against?

Insolvency proceedings are brought against Companies and tradesmen.

2. What are the conditions for opening insolvency proceedings and who can ask for insolvency?

Company itself and creditors may ask for insolvency.

If the creditor believes that the debtor will not pay its debts, then creditor can file bankruptcy proceedings against the debtor. However, after filing the bankruptcy proceedings via execution offices and when the debtor receives the execution order and pays the debt, then the creditors cannot continue the proceedings.

Also for the creditor to directly file a bankruptcy lawsuit, there are some conditions stated in the Code, which are as if the Debtor's address is uncertain, if the debtor is escaping from its liabilities and covenants, or if the debtor is violating the creditor's right and has fraudulent behaviour, etc. If the conditions do not exist, the creditor cannot directly file a lawsuit against the debtor to make it bankrupted.

3. How is a debtor's insolvency officially declared?

When the Commercial Court of First Instance declared its decision, the Debtor's insolvency become officially declared. After that the Court inform the Administration of Bankruptcy about the decision to proceed the actions.

4. Where is the declaration of insolvency published? Are there online-registers?

When Administration of Bankruptcy is informed about the decision of the Court, on its own, they immediately inform the Deed Registry, Trade Registry, Custom and Post Administration, The Bank Association of Turkey, local Chamber of Trade, Chamber of Industry, Stock Exchange, Capital Markets Board and other institutions.

Additionally, on the date of decision, the Administration of Bankruptcy make the decision published on the newspaper which have more than 50.000 circulation and makes distribution national wide as well as on the Trade Registry Gazette.

5. Which different type of insolvency / liquidation proceedings do exist?

There are three types of insolvency proceedings: i) filing bankruptcy proceedings against debtor based on a general document via Execution Offices, ii) filing bankruptcy proceedings against debtor based on a bill of exchange via Execution Offices, iii) directly filing bankruptcy lawsuit against debtor to the Commercial Court of First Instance. The last type of proceeding can be commenced by the Company itself.

5.1. Which types of pre-insolvency / hybrid / restructuring proceedings do exist?

Before an insolvency proceeding there are more options before restructuring proceeding, suspension of bankruptcy, arrangement of bankruptcy and granting a term of respite in extraordinary situations do exist in Turkish Bankruptcy Law.

5.2. Please indicate for each of these proceedings

- **if the proceeding is court supervised**
  Yes. The Commercial Court of First Instance of where the centre of activities of the company situated monitors the proceeding.
- **if the opening of the proceeding is published**
  Yes. In Turkish Law system liquidation and opening of proceeding will declared on newspapers or official announcement website.
- **which is the purpose of the proceeding**
  The purpose of the restructuring proceedings is recover the company with share capital and cooperatives which are in financial difficulties, and also provide an opportunity for continuation of company's economic activities.
- **if payments made in the framework of such proceeding will be revoked or not in case of future insolvency**
  If there is an opportunity of recovery for the company, there is no need to commence any insolvency proceeding.

6. What powers do the debtor/the debtor's management and the insolvency administrator have, respectively?

Opening of bankruptcy begins with the decision of the Court. By the opening of bankruptcy, all assets of the Debtor that can be distrainable, is construed bankrupt's estate and the debtor cannot make any savings on the assets included in the bankrupt's estate. The management of the debtors' assets passes to the bankrupt's estate. The debtor cannot make any action that causes increase of liabilities and decrease of current assets registered to bankrupt's estate. the Bankrupt's estate is the only authorized body to manage the assets registered to bankrupt's estate. the Bankrupt's estate uses its power through bankruptcy administration who is legal representative.

7. Who may register a claim in case of a debtor's insolvency/liquidation?

(X) The creditors themselves or their lawyers

( ) Only an attorney

(X) Only a domestic attorney

( ) Other requirements for an individual filing a claim?

8. What is required for a claim to be filed?

( ) Submitted to administrator - Declaration sent via certified mail

( ) Submitted to administrator - Free method of delivery, but creditor bears the burden of proof

(X) Claim should be submitted through court

(X) other: The requirement for a claim depends on which kind of proceeding the creditor chooses. If the creditor chooses to file bankruptcy proceeding via Execution Offices a special kind of petition must be filled basing on the debt and send to the Debtor. If the Debtor does not pay the debt within a time, then the debtor became able to file a lawsuit against the debtor to make it bankrupted.

However, the creditor can directly file a lawsuit before the Commercial Court without commencing it through Execution Offices. In such case, there are some conditions set forth in the Code; such as if the Debtor's address is uncertain, if the debtor is escaping from its

liabilities and covenants, or if the debtor is violating the creditor's right and has fraudulent behaviour, etc. If the conditions do not exist, the creditor cannot directly file a lawsuit against the debtor to make it bankrupted.

9. Does a time limit for the filing of claims exist? If yes, can it be extended? If there is a time limit, does it exclude the claim for ever?

When the Creditor files a bankruptcy proceeding against the Creditor via Execution Offices, the Debtor has three choices i) the debtor can object to the execution order and does not accept the debt ii) the debtor does not object to the debt but also does not pay it either. iii) the debtor accepts the debt and pays it. In the first two choices, the Creditor has one-year time limit to file a bankruptcy lawsuit against the Debtor, begins from the date of the execution order.

In accordance with Turkish Bankruptcy and Enforcement Law Article 156; after this one-year period of prescription, there is no possibility of time extension, yet there is a possibility for the Creditor that request to issue a new insolvency proceedings and thereafter the Creditor can file a new insolvency case against the Debtor. For commence a new insolvency proceeding there is no limitation of time.

10. A claim must/can be lodged in:

(X) the official language of the State of the proceeding

( ) English

( ) Creditor's language

11. Written proof of claim needs to be filed…

(X) Simultaneous to the initial submission of said claim

( ) Only if a dispute arises

( ) Other:

12. Documents concerning the claim must be...

(X) Translated to the State's official language

( ) English is sufficient

(X) Original language is sufficient

( ) The original documents

( ) Copies of the original documents are sufficient

13. Which type of claims can be lodged? How do you treat retention of title?

Traders are subject to bankruptcy due to all kinds of (money) debts. In other words, a trade is subject to bankruptcy both for its commercial business and for its personal debts. There is no difference between public claims and claims arising from private law. No matter how fewer the creditor wants to go through bankruptcy and no matter how good the debtor's financial situation, the creditor can follow the debtor through bankruptcy and the court is obliged to decide the bankruptcy of the debtor if the debtor does not pay his debt until the end of the bankruptcy case at the latest. Bankruptcy of the debtor may be required only for receivables from money and secured claims.

Provided the retention of title, only movable goods can be sold and the transfer of ownership of the sold property to the buyer is conditional upon the request for full payment of the debt.

The validity of the process only officially valid when the inheritor's notary public is registered in the special register.

14. How are claims ranked? Are there any preferences for certain types of claims (e.g. tax, social security contribution, wages etc.)?

- The priority of distribution is:
  1. Dues of Pledgee-Creditors.
  2. Employee's salaries and compensation which are due one year before the opening of bankruptcy and employee's salaries and compensation which become due by the opening of bankruptcy.
  3. The debts to the association and provident fund established for employees.
  4. Alimony and maintenance creditor's right and all right arised from the Family Law which are due one year before the opening of bankruptcy.
  5. Dues of the persons whose assets are given to the debtor's management because of the that guardianship and custody relationship
  6. Dues stated privileged in Special Statue.
  7. Other dues which are nor privileged.

In case of bankruptcy, the debts of the debtor shall be in the third place as the privileged receivable according to Article 206 of the Enforcement and Bankruptcy Law. Accordingly, if there is another receivable which takes priority of the third row, tax etc. receivables will be in the same order as the priority receivables and no shares will be given to the other receivables until they are collected. Consequently, as long as the debtor continues its commercial activities, the sale price will be distributed proportionally if the debtor participates in the public receivable together with the commercial receivables under normal conditions. The public receivable has no priority. However, pledged receivables already established are reserved.

15. What effect does insolvency proceeding has on enforcement proceedings brought by individual creditors?

Bankruptcy is a collective enforcement way and all creditors are treated equally, therefore there is no need to file an individual enforcement proceeding. All creditors will register their dues to bankrupt's estate and will be satisfied by the money that will have at the end of the dissolution. In this regard, after the opening of bankruptcy, all enforcement files will be stopped and by the finalization of the decision all enforcements files will be dismissed. It is not possible to file an enforcement file against to debtor during bankruptcy proceedings.

16. What effect does insolvency proceeding have on pending lawsuits?

The authority to follow The civil lawsuits that the debtor is a part of and is on pending related to the assets registered to the bankrupt's estate, are ended by the opening of the bankruptcy and this authority passes to the bankruptcy administration. Also these lawsuits will be stopped and be continued 10 days after the second meeting of creditors.

However, the lawsuits stated below will not stopped:

1. Action for evacuation
2. Criminal cases and alimony cases
3. Lawsuits related the enforcement proceeding which is about converting pledge to cash.
4. Compensation lawsuits raised from torts and damages against the entirety of body.
5. Compensation lawsuits raised against the insult of person's dignity and proud.

6. Lawsuits related personal situation, divorce and marriage, etc.

17. What effect does insolvency proceeding have on current contracts?

The contacts below that the debtor is a part of and made before the opening of bankruptcy will be ended:

- Agreement of Usufructuary Lease
- Agreement of Authorization To Represent
- Proxy Agreement
- Ordinary Partnership Agreement
- Current Account Agreement
- Commission Agreement
- Agency Agreement
- Association of Ship-owners

The contacts below that the debtor is a part of and made before the opening of bankruptcy will not be ended:

- Sales Agreement
- Agreement about good Exchange
- Lease Agreements
- Agreement about loan of an object for use
- Donation Agreements
- Service Agreements
- Contract of Bailment

In such cases, the demand of the other part of the agreement is a bankruptcy receivable. If this receivable is not an amount of money, then it will be converted to money and registered to the bankrupt's estate.

When the bankruptcy is opened, if both part of the agreement has not performed its obligations yet, the other party can demand a collateral to deposit. If any collateral is not deposited, then other party can return from the agreement. By the party's return from the agreement, its receivable will not be registered to the bankrupt's estate and discharged from its obligation to bankrupt's estate.

18. Under which conditions may set-offs be invoked?

The debts of the bankrupt's creditor are generally reduced by the amount to be paid in bankruptcy, but the creditor must pay the bankruptcy debt fully. If set-off is allowed in bankruptcy, the situation of the person who is creditor of the bankrupt and debtor of the bankrupt at the time same time, this is better than the situation of the person who is only the creditor of the bankrupt. Because only the person who is both creditor and debtor of the bankrupt will be fully collect their bankruptcy receivables. The creditor must inform the bankrupt's estate about the set-off will. Set-off in bankruptcy is possible as a rule but there are preventive measures because this authority can be misused to the detriment of other creditors. The creditor may set-off his receivables and debts to the bankrupt even if receivables are not due since receivables legally become due upon the bankruptcy. According to the Article of 200 of Enforcement and Bankruptcy Law, there are some circumstances that set-off is not possible. For example, if the creditor's claim is based on a bearer paper, set-off action can not be occur.

19. What are the conditions of avoidance actions against payments, payment securities etc., granted prior to the opening of insolvency proceeding?

If bankruptcy has not been filed yet, there is no right to appeal against payments paid pre-insolvency. After the bankruptcy is opened, the bankrupt's estate requires approvals for every transaction made and any payments to creditors. Also the bankruptcy manager's approval may be needed. Other creditors who did not get paid have right to appeal. The appeal is made to the bankrupt's estate and the payment is stopped.

20. What are the rules of the distribution of proceeds?

When the pledged property is sold by the bankruptcy administration, pledged receivables are paid firstly with their interests. But taxes and public receivables which must be taken from the subject of the pledge are paid before the pledged receivables. If there is remaining balance from the sale of pledged property sales, this balance will remain on the bankrupt's estate and will be allocated to the payment of unsecured claims. Unsecured claims are divided into two as privileged and non-privileged claims. In priviliged claims there are three categories, if there is remaining balance after the allocation it will be shared among the creditors of non-privileged claims.

21. What are the conditions for and the effects of closure of insolvency proceedings?

Insolvency proceedings ends with the insolvency certificate for the creditors who have not been able to receive and distribute the money at the bankruptcy's estate. However, the insolvency proceedings is not closed automatically after the liquidation of the insolvency. For this reason, the commercial court, which has decided that the insolvency is opened, should decide to close the insolvency.

The decision of the commercial court for the closure of bankruptcy is announced by the enforcement office. When the bankruptcy is closed, the bankruptcy department confiscates and sells this property or right as if the bankruptcy liquidation continues. It distributes this amount to the creditors by taking the receivables as incomplete.

However, even in the closure of the insolvency proceedings, bankrupt will still have this title.

22. Could there be other civil or criminal consequences of insolvency or liquidation?

According to the Article 376 of the Turkish Commercial Code, the Board of the Directors of the company issues an interim balance sheet both on the basis of the continuity of the entity and on the probable sales prices. If it is obvious from that balance sheet that the assets are not sufficient to cover the receivables of the creditors of the company, the BoD shall notify this to the commercial court of first instance where the company headquarters is located and request the bankruptcy of the company. Only creditors, company managers and liquidators may apply for bankruptcy. While termination is the discretionary form of the company, bankruptcy is necessity. Even if there is no consent of the Company, it may be terminated in the presence of conditions. The bankruptcy decision is made by the court and minimum 25.000 TL bankruptcy advance required for bankruptcy.

Notification of the Company's immaturity to the court is deemed to be among the non-transferable duties and powers of the Board of Directors in Article 375 of the TCC and this obligation arises on all members of the Board of Directors. Therefore, the measures to be taken in relation to the debts should be taken by the board of directors themselves and this duty should not be transferred to one or more members. Because, if the necessary precautions are not taken, all board members will be responsible together even if the authority to represent and bind the company is given to a single member. Therefore, the creditor who is damaged due to the company's debt is not able to take the responsibility of the entire board of directors for the negligence in taking the necessary measures, not a single member. At this

point, failure to take such measures is a violation of the loyalty obligation in itself, and it is not examined whether there are any defects or omissions of the board members. In addition, members of the board of directors may be sentenced to 10 days to 3 months imprisonment for failing to take the necessary measures in addition to being held personally responsible for their receivables. However, in order for the court to make such a decision, the creditors must first have a request in this direction.

23. Are there any special issues to be mentioned for your country?

Due to the breadth of the subject, each matter should be examined in detail with the regard of Enfrocement and Bankruptcy Law by cases.

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