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Insolvency/bankruptcy

 Greece

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European Judicial Network
(in civil and commercial
matters)

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?

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.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

The insolvency estate (*ptocheutikí periousía*) includes all the assets owned by the debtor, irrespective of where they are located, on the date of declaration of insolvency. It does not include (a) any unattachable assets, i.e. things which are absolutely necessary for the basic subsistence of the debtor and his family, and things the debtor needs in order to be able to work for a living, or (b) any assets which are excluded by specific provisions of law. Nor does it include any assets acquired by the debtor after the declaration of insolvency.

4 What powers do the debtor and the insolvency practitioner 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.

5 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.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Any bilateral contracts which are pending at the date of declaration of insolvency, and to which the debtor is a party, will remain in force unless otherwise specified by the Insolvency Code. Upon permission given by the judge-rapporteur, the administrator has the right to fulfil any pending contracts and require the counterparties to fulfil them. Any contracts of a lasting nature will remain in force, unless otherwise specified by law. Any financial contracts are excluded. The provisions of insolvency law do not affect the right to terminate in accordance with law or the contract. The declaration of insolvency provides a ground for terminating contracts of a personal nature to which the debtor is a party. The administrator may transfer a contractual relationship in which the debtor is the counterparty to a third party. An employment relationship is terminated upon declaration of insolvency.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

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.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

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.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

Creditors have to lodge their claims against the debtor with the registrar of insolvencies (*grammatéas ton ptocheúseon*). All creditors, irrespective of privileges or security, including those whose claims are conditional, form the creditors' meeting (*synéleusi ton pistotón*). The first meeting is convened by the judgment declaring the insolvency. The meeting may elect a three-member creditors' committee (*epitropí pistotón*), which may, in turn, appoint a common representative for all members. The three-member creditors' committee will monitor the course of the insolvency proceedings.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

Upon completion of the inventory taken of the debtor's movable and immovable assets, the administrator may consult the judge-rapporteur and request permission to sell goods or movable items included in the estate, but

only to cover current needs. Only upon completion of the verification of creditors, and provided that no reorganisation plan for the undertaking is accepted or ratified, or if such acceptance or ratification is cancelled, may the administrator liquidate the debtor's assets and distribute the proceeds to the creditors by disposing either of the undertaking as a whole or of its individual assets. The debtor's immovable assets can be disposed of only with the permission of the insolvency court, granted in response to a request from the administrator and following a report from the judge-rapporteur.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

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.

12 What are the rules governing the lodging, verification and admission of claims?

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. The following apply to the verification: (a) it is carried out by the administrator in the presence of the judge-rapporteur three days after expiry of the time-limit set for lodging claims; (b) a creditor whose claim is being verified may attend the verification either personally or through a duly authorised third party; (c) the verification is carried out by comparing the creditor's documents against the debtor's books and documents; (d) the judge-rapporteur draws up a report on the verification of creditors; (e) in the event of doubt, the judge-rapporteur will decide whether to admit the claim, and may admit it provisionally; (f) objections may be raised during the verification by the debtor, the administrator and creditors whose claims have already been accepted. There is no dedicated website providing specific forms for the above procedure. There are, however, specific forms available from the registrar of insolvencies at the court of first instance (*protodikeío*).

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

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 (*syngyitikó*), 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*.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

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.

15 What are the creditors' rights after the closure of insolvency proceedings?

Upon a declaration of termination of insolvency, the divestment of the debtor is lifted, the debtor resumes the management of his assets, and the creditors may bring proceedings individually. More specifically, the insolvency proceedings are terminated upon liquidation of the assets, and the administrator will submit a report within one month.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

The cost and expenses of the insolvency proceedings are charged to the insolvency estate.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Any acts done by the debtor in the period from the cessation of payments to the declaration of insolvency (the 'suspect period', *ýpopti períodos*) which are detrimental to the general body of creditors may be revoked (acts subject to potential revocation, *práxeis dynitikís anáklisis*) or must be revoked (acts subject to mandatory revocation, *práxeis ypochreotikís anáklisis*) subject to the terms and conditions laid down in insolvency law. An action seeking revocation may be brought before the insolvency court by the administrator or, subject to certain conditions, by a creditor. Anyone who has acquired any of the debtor's assets on the basis of a revoked act must return it to the insolvency estate.

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