Insolvency/bankruptcy

If a company or entrepreneur gets into financial distress, or cannot pay its debts, specific proceedings are available in every country to address the situation inclusively, involving all the creditors (parties who are owed money).

Insolvency proceedings differ according to their objectives:

Companies

If the company **can be saved** or the business is viable – its debts may be **restructured** (usually in agreement with creditors). This is to safeguard the firm and preserve jobs.

If the business **cannot be saved**, the company must be wound up (it 'goes bankrupt').

Entrepreneurs

Can usually apply for a procedure involving an **ordered repayment plan** for their debts and a debt-discharge following a reasonable period of time (3 years, usually). This ensures they are not personally bankrupted and can launch further ventures in future.

In all cases, as soon as the proceedings are formally opened, creditors can no longer take individual action to reclaim their debts. This is to ensure all creditors are on an equal footing and protect the debtor's assets.

To be paid, creditors must prove their claims, either to the court or to the body (generally an **administrator** or **liquidator**) responsible for reorganising or liquidating the debtor's assets. In specific circumstances, this can be done by the debtor themself.

Cross-border insolvency (EU rules)

Insolvency cases involving companies or entrepreneurs with activities, assets or affairs in several countries can be resolved under EU law – specifically Regulation 2015/848 (see here for a summary of how it works).

Forms referred to in Regulation 2015/848

Notice of insolvency proceedings PDF (288 KB) en

Lodgement of claims PDF (294 KB) en

Objection with regard to group coordination proceedings PDF (265 Kb) en

National procedures

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Related link

Bankruptcy and insolvency registers

Last update: 30/05/2023

Insolvency/bankruptcy - Bulgaria

1 Who may insolvency proceedings be brought against?

There is no separate law governing insolvency proceedings in Bulgaria. The general provisions governing insolvency are laid down in the Insolvency Chapter of the Commerce Act. The insolvency of banks and insurance companies is governed by the special provisions laid down in the Bank Insolvency Act and the Insurance Code.

Insolvency proceedings are opened against insolvent traders. Insolvency proceedings are also opened against a limited liability company, joint-stock company, or limited joint-stock partnership that is overindebted.

Insolvency proceedings may also be opened against a person trading covertly through an insolvent debtor. Upon the commencement of insolvency proceedings against a commercial undertaking, proceedings are deemed to have been concurrently opened against a partner with unlimited liability.

Insolvency proceedings are also opened against sole proprietors who have died or been struck off the Commercial Register if they were insolvent when they died or were struck off. Insolvency proceedings are also opened against partners with unlimited liability, even if the partner has died or been struck off the Commercial Register. An application to open insolvency proceedings may be filed within a period of one year from the date on which the debtor died or was struck off the Commercial Register.

Insolvency proceedings are also opened against insolvent companies in liquidation. Insolvency proceedings against banks and insurance companies are governed by the rules and procedure laid down in a separate law.

Matters relating to the insolvency of a trader that is a public undertaking exercising a State monopoly or established under a special law are governed by a separate law. No insolvency proceedings can be opened against a trader that is a public undertaking exercising a State monopoly or established under a special law.

There is no provision in national law for insolvency proceedings against natural persons other than sole traders.

A Bulgarian court may open ancillary insolvency proceedings against a trader that has been declared insolvent by a foreign court, if it possesses significant assets in Bulgaria.

2 What are the conditions for opening insolvency proceedings?

The following prerequisites for opening insolvency proceedings apply to all traders:

(1) The debtor must be a trader.

Insolvency proceedings may be opened not just against a trader but against a person who trades covertly through an insolvent debtor, a partner with unlimited liability, even if they have died or been struck off, and a sole trader who has died or been struck off.

Under Article 612 of the Commerce Act, insolvency proceedings cannot be opened against a public undertaking that exercises a State-mandated monopoly or has been established under a special law.

(2) The application must be submitted by one of the persons referred to in Articles 625 and 742(2) of the Commerce Act, and namely: the debtor, the liquidator or a creditor of the debtor in the case of a business transaction, the National Revenue Agency (Natsionalna agentsiya za prihodite) (in the case of a public debt to the central government or municipalities arising from the debtor's business activity or a debt in the form of a private government claim), by the

General Labour Inspectorate Executive Agency (Izpalnitelna agentsiya Glavna inspektsiya po truda) in case obligations to pay salaries or remunerations to at least one-third of the workers and employees have fallen due and remain unfulfilled for more than two months, or by a member of the governing body of the company (in the case of overindebtedness).
Upon becoming insolvent or overindebted, a debtor must file an application seeking permission to open insolvency proceedings within a period of 30 days. In the case of a sole trader, the application may be filed by the sole trader or their successor. Where the debtor is a company, the application is filed by the governing body, a partner with unlimited liability or a company representative or by a court-appointed liquidator. In this case, the following should be annexed to the application:
- a copy of the latest annual financial report certified by a registered auditor and balance sheet as at the date of the application, if the trader has a legal obligation to produce financial reports and balance sheets;
- an inventory and description of the assets and liabilities as at the date of the application;
- a list of creditors, which contains their addresses, the type and amount of their claims, and the collateral for their claims;
- a list of the personal and matrimonial property of sole traders and partners with unlimited liability;
- evidence that the National Revenue Agency has been notified of the opening of insolvency proceedings;
- an express power of attorney, if the application is filed by a proxy.
Where the application is filed by a creditor or by the General Labour Inspectorate Executive Agency, all available evidence supporting the creditor's claim and the debtor's purported insolvency must be annexed to the application. The creditor must also submit a stamp duty receipt and evidence that the National Revenue Agency has been notified of the opening of insolvency proceedings.
(3) Conditions for enforceability:
- a monetary obligation of the debtor relating to or arising from a commercial transaction, including the validity, performance, non-performance, termination, annulment and voidance of that transaction or the consequences of its termination;
- a debt under public law to the central government and municipalities arising from the commercial activities of the debtor;
- or a debt arising from a private government claim;
- or an obligation to pay salaries or remunerations to at least one-third of the workers and employees which remains unfulfilled for more than two months
'Commercial transaction' means a transaction concluded by a trader in the exercise of their occupation, including transactions expressly specified in Article 1 (1) of the Commerce Act (purchase of goods or other articles for resale in their original, processed or finished form, sale of own manufactured goods, purchase of securities for resale, commercial agency and brokerage, commission, forwarding and transport transactions, insurance transactions, banking and foreign-exchange transactions, bills of exchange, promissory notes and cheques, warehousing transactions, licensing transactions, supervision of goods, transactions in intellectual property, hotel operation, tourist, advertising, information, stage and entertainment industry production and other services, purchase, construction or furnishing of real property for the purpose of sale and leasing), regardless of the capacity of the persons conducting those transactions. In the event of doubt, a trader is deemed to have concluded a transaction in the exercise of their occupation.
The different types of claims of the central government and municipalities under public law are stipulated in Article 162(2) of the Tax and Social Insurance Procedure Code. They are as follows:
- taxes, including excise and customs duties, compulsory social insurance contributions and other contributions payable to the State budget;
- other payables for which the base and amount is established by law;
- stamp duty and municipal fees established by law;
- social insurance expenditure effected in a manner that does not conform to the requirements laid down by law;
- the monetary equivalent of items of property forfeited to the government, fines and pecuniary penalties, and cash confiscated and forfeited to the government;
- debts arising from money awarded to the central government or municipalities in court sentences, judgements and rulings that have entered into force and from decisions on the recovery of unlawfully granted State aid of the European Commission;
- debts arising from penalty orders;
- unduly paid or overpaid amounts and unlawfully received or unlawfully disbursed amounts under projects co-financed by the pre-accession financial instruments, operational programmes, Structural Funds and Cohesion Fund of the European Union, the European Agricultural Funds, the European Fisheries Fund, the Schengen Facility and the Transition Facility, including the related national co-financing, recoverable on the basis of an adopted administrative decision and other fines and pecuniary sanctions provided for in national and European Union law;
- the interest due on the above receivables.
Public receivables include receivables to be paid into the budget of the European Union pursuant to decisions of the European Commission, the Council of the European Union, the European Court of Justice and the European Central Bank imposing monetary obligations subject to enforcement on the grounds of Article 256 of the Treaty establishing the European Community and the receivables of Member States of the European Union enforceable on the grounds of final decisions on the confiscation or forfeiture of cash or the cash equivalent of confiscated or forfeited property as well as decisions on the application of financial sanctions imposed in other Member States of the European Union, when recognised and enforceable in Bulgaria.
Regardless of whether the claim has arisen from a commercial transaction or under public law, it must be ascertained as valid and existing as at the date of the court's ruling on the application to open insolvency proceedings.
(4) Insolvency proceedings are opened against insolvent traders. Insolvency proceedings are also opened against a limited liability company (дружество с ограничена отговорност), joint-stock company (акционерно дружество), or limited joint-stock partnership (командитно дружество с акции) that is overindebted. Insolvency and overindebtedness are objective factual conditions, which have legal definitions in the Commerce Act.
A trader is insolvent when unable to pay:
- a monetary obligation that has fallen due, arising from or in relation to a commercial transaction, including the validity, performance, non-performance, termination, annulment and voidance of that transaction or the consequences of its termination;
- a debt under public law to the central government and municipalities arising in relation to the commercial activities of the trader;
- an obligation in the form of private state receivables
- or an obligation to pay salaries or remunerations to at least one-third of the workers and employees which remains unfulfilled for more than two months
A trader is presumed to be unable to pay a debt that has fallen due under the first hypothesis if, prior to the filing of an application to open insolvency proceedings, that trader has failed to submit financial reports for the last three years for publication in the Commercial Register.
A debtor is deemed to be insolvent if they have suspended payments. A debtor is deemed to have suspended payments even if they have fully or partially paid their debts to certain creditors. Insolvency is also presumed if, under enforcement proceedings instituted on the grounds of a final ruling obtained by the creditor who lodged the application to open insolvency proceedings, the debt has not been paid, either in part or in full, within 6 months from the receipt by the debtor of a request or notice for voluntary payment.

A company is deemed to be overindebted when its assets are insufficient to cover its liabilities.
(5) The debtor is not experiencing temporary difficulties but is in a state of objective and permanent insolvency and overindebtedness.
The competent insolvency court is the provincial court with jurisdiction over the area in which the trader has its head office at the time of the application to open insolvency proceedings. An application to open insolvency proceedings filed by a debtor or liquidator is heard by the court without delay in a closed-court hearing and a notice is published in the Commercial Register. An application to open insolvency proceedings filed by a creditor is heard in a closed-court hearing in which the creditor and the applicant must appear on a notice from the court, not later than 14 days from the date of the application. The court stays the proceedings instituted on an insolvency application lodged by a debtor or liquidator if, by the time it enters a ruling on the application, an insolvency filing has been made by a creditor. Until the end of the first hearing in the proceedings instituted on an application lodged by a creditor, other creditors may be constituted as parties, raise objections and present written evidence. The court assigns a case number to the filing on the date when the application is lodged and sets a date by which it must decide on the application. The period in question may not exceed three months.
Before ruling on the application the insolvency court, on a motion from the creditor or acting on its own motion, may order the following anticipatory and precautionary measures, if necessary to preserve the assets of the debtor:
- that a receiver be appointed;
- that a security by way of garnishment, foreclosure or other precautionary measures be allowed;
- that enforcement proceedings against the debtor's property be stayed, except in the case of enforcement proceedings instituted pursuant to the Tax and Social Insurance Procedure Code;
- that the measures envisaged by law in order to protect the available assets of the debtor be allowed;
- that premises, equipment, transport vehicles, etc., where personal property and effects of the debtor are stored be sealed, except for living premises and other spaces necessary for the debtor to continue to operate or store perishable goods.
When the measures are sought by a creditor, the court admits them, if the creditor's motion is supported by compelling written evidence and/or if a security in an amount determined by the court is provided to compensate the debtor for any damages in the event that the debtor is subsequently found not to be insolvent or overindebted. The precautionary measures are to the benefit of all creditors of the insolvency estate and may be lifted by the court, if they are no longer necessary in order to preserve the estate and secure the rights of creditors.
The ruling is notified to the party subject to the measures and to the party that sought their imposition. It is subject to immediate enforcement and may be appealed within a period of 7 days from the date of receipt of the notice. Appeals do not have a suspensive effect. Precautionary measures are deemed to have been lifted from the date on which a ruling to dismiss the application to open insolvency proceedings is entered. The precautionary measures apply until the date of the ruling opening insolvency proceedings.
When insolvency or overindebtedness is ascertained, the court, by the ruling referred to in Article 630(1) of the Commerce Act, declares the insolvency or overindebtedness, determines its commencement date, opens insolvency proceedings, appoints a provisional receiver, admits a security by means of garnishment, foreclosure or other precautionary measures, and sets a date for the first meeting of creditors within a period of one month from the date of the ruling at the latest.
When it is evident that continued operation will harm the insolvency estate, the court may, on a motion from the debtor or the receiver, the National Revenue Agency or a creditor, declare the debtor insolvent by the ruling envisaged in Article 630(2) of the Commerce Act and order that it cease trading, either from the date of the ruling opening insolvency proceedings or from a later date preceding the time-limit for proposing a recovery plan. When ruling opening insolvency proceedings against a water and sewerage operator, the court may not order it to cease operating before a new water and sewerage operator has been designated in the area.
The ruling opening insolvency proceedings is binding on all parties.
After the court has instituted insolvency proceedings or imposed anticipatory and precautionary measures, the debtor continues to trade under the supervision of the receiver and may conclude new contracts only with the prior consent of the receiver and on condition that it continues to comply with the measures ordered in the ruling opening insolvency proceedings. The court may strip the debtor of the right to manage and dispose of its property and grant that right to the receiver, if it finds that the actions of the debtor are detrimental to the interests of creditors.
By the ruling envisaged in Article 631 of the Commerce Act the court rejects the application to open insolvency proceedings if it ascertains that the debtor's difficulties are temporary or that its assets are sufficient to cover its debts without prejudicing creditors' interests.
When available assets are insufficient to cover the initial expenses of the insolvency procedure and the expenses have not been prepaid, the court adopts a ruling pursuant to Article 632(1) of the Commerce Act declaring insolvency or overindebtedness, opens insolvency proceedings, admits a security by means of garnishment, foreclosure or other precautionary measures, orders that the company cease trading, declares the debtor insolvent and stays proceedings, without ordering that the trader be struck off the Commercial Register. Stayed proceedings may be reopened on a petition from the debtor or the creditor within a period of one year from the entry of the ruling in the Commercial Register. Proceedings may be reopened if the petitioner is able to demonstrate that sufficient assets are available or deposits the sum necessary to cover initial expenses. If none of the parties requests that proceedings be reopened, the court terminates proceedings and orders that the trader be struck off the Commercial Register. The same rules apply if the debtor's available assets are found during the proceedings to be insufficient to cover the costs of the insolvency procedure.
Rulings under Articles 630 and 632 of the Commerce Act are subject to appeal within a period of 7 days from their entry in the Commercial Register and the ruling by which an application to open insolvency proceedings is rejected is subject to appeal within a period of 7 days from the date of its communication in accordance with the procedure stipulated in the Civil Procedure Code. A ruling pursuant to Article 630 is subject to enforcement with immediate effect.
Insolvency proceedings are deemed to have been opened from the date of entry of the ruling pursuant to Article 630(1) of the Commerce Act. When the ruling opening insolvency proceedings is annulled, garnishment and foreclosure are deemed to have been lifted, the rights of the debtor are restored and the powers of the receiver are terminated as from the date of entry of the final judgment in the Commercial Register.
The court approves or rejects the recovery plan of the undertaking by a dedicated ruling. Where the recovery plan is approved, the court terminates the insolvency proceedings and appoints the supervisory body proposed in the plan or elected by the creditor meeting. The ruling is subject to appeal within 7 days from the date of entry into the Commercial Register.
By the ruling provided for in Article 710 of the Commerce Act the court declares the debtor insolvent if no recovery plan is proposed within the relevant statutory period or the plan proposed fails to be adopted or approved. The same rules apply in the cases provided for in Articles 630(2), 632(1) and 709(1) of the Commerce Act (reopening of proceedings in the event of the debtor's failure to perform its obligations under the recovery plan). By the same ruling the court declares the debtor insolvent, orders that the insolvent enterprise cease trading, admits general garnishments and foreclosure in respect of the debtor's property, terminates the powers of the governing bodies of a debtor that is a legal person, strips the debtor of the right to manage and dispose of the insolvency estate, and orders conversion into money of the insolvency estate assets and distribution of the proceeds. The ruling proclaiming insolvency applies to all parties and is subject to entry in the Commercial Register. It is enforceable with immediate effect and may be appealed within 7 days from the date of entry.

From the time of entry of the ruling proclaiming insolvency in the Commercial Register, the debtor's immovable property, moveable property and receivables from bona fide third parties are deemed to be attached. The general attachment on the real property and vessels owned by the debtor is entered in the notarial registers or shipping registers on the grounds of the ruling proclaiming the debtor insolvent that has been entered in the Commercial Register. All the debtor's monetary and non-monetary obligations become enforceable against him from the date of the ruling proclaiming insolvency. The market value in money of non-monetary claims is determined at the date of the ruling. Non-monetary obligations are converted into money on the basis of their market value on the date of the ruling opening insolvency proceedings.

Foreign court judgments declaring insolvency are recognised in Bulgaria on the basis of reciprocity, if they are issued by a body of the State in which the debtor has its registered office. At the request of a debtor, the receiver appointed by a foreign court or a creditor, the Bulgarian court may open ancillary insolvency proceedings against a trader declared insolvent by a foreign court, if the trader possesses significant assets in Bulgaria. In this case, the decision applies only to the debtor's assets in Bulgaria.

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?

From the date of the ruling opening insolvency proceedings, the debtor's property becomes the insolvency estate from which all creditors' claims arising from commercial and non-commercial debts are to be satisfied.

Under national law the insolvency estate comprises:

- the assets owned by the debtor as at the date of the ruling opening insolvency proceedings;
- the assets acquired by the debtor after the date of the ruling opening insolvency proceedings;
- the assets of a debtor that is a sole proprietor include half of the personal property, rights in personal property and cash deposits owned as marital property;
- the assets of a debtor that is a partner with unlimited liability include half of the personal property, rights in personal property and cash deposits owned as marital property;

A share or contribution not paid or contributed by a partner who has limited liability are collected by the receiver in order to be included in the insolvency estate. Any additional newly collected claims of the debtor, the proceeds from the sale of its assets and the amounts receivable by creditors which have been abandoned are included in the insolvency estate.

When the sale price of an item of property pledged or secured exceeds the secured claim, including the interest accrued, the residual amount is included in the insolvency estate. The same rule applies to creditors to whom the right to retain a security has been granted.

Where the court has invalidated a transaction in respect of the creditors of the insolvency estate, the assets provided by a third party are returned, and if such assets are not included in the insolvency estate or money is owned, the third party is constituted as creditor in the proceedings.

If the proceeds from the realisation of assets subject to precautionary measures imposed before the commencement of insolvency to secure public debts or against which enforcement proceedings for the collection of public debts are ongoing exceed the amount of the claim, including the interest accrued and the enforcement expenses incurred, the public bailiff remits the residual amount to the insolvency estate bank account. If the public bailiff fails to realise the assets within a period of 6 months from the commencement of insolvency proceedings, the asset passes from the public bailiff to the receiver and is realised in the insolvency proceedings. Where a payment in favour of a claimant is made between the date on which enforcement proceedings were stayed and the entry of the ruling opening insolvency proceedings, the amount paid is returned to the insolvency estate. If steps are taken to realise the security in favour of a secured creditor, the portion of the proceeds that exceeds the security amount is added to the insolvency estate.

The insolvency estate does not include the following:

- the non-seizable assets of the debtor and the unlimited partner;
- the financial securities referred to in Articles 22h and 63a(2) of the Underground Natural Resources Act;
- the assets of water and sewerage operators required for their primary operations until a new water and sewerage operator in the respective area has been designated;
- the amounts deposited in the bank account referred to in Article 60(2) of the Waste Management Act.

According to national law (Articles 444 to 447 of the Civil Procedure Code) enforcement may not be directed against the following items of personal property of a debtor that is a natural person:

- objects intended for ordinary use by the debtor and their family as specified in a list adopted by the Council of Ministers;
- the food necessary for the sustenance the debtor and their family for a period of one month or, in the case of agricultural producers, until the new harvest or its equivalent in other agricultural products;
- the fuel necessary for heating, cooking and lighting for three months;
- the machines, tools, devices and books considered essential personal property and enabling a freelance professional or craftsman to continue practising their profession;
- the land of a debtor that is agricultural producer, and in particular: gardens and vineyards with an area of up to 0.5 ha or fields with an area of up to 3 ha, including the necessary farming machines, tools, fertilisers, plant protection substances and seeds for sowing for a period of one year;
- a team of draft animals, a cow and five small farm animals, ten beehives and the domestic fowl, including the necessary feed until the new harvest or until they can be put out to pasture;
- the home of the debtor, if neither they nor any members of their family sharing the same living space, have another home, regardless of whether or the debtor lives in it. If the home exceeds the housing needs of the debtor and the members of their family, as determined by a Decree the Council of Ministers, the surplus is put up for sale if the conditions stipulated in Article 39(2) of the Ownership Act have been satisfied;
- other non-seizable property items and receivables protected against enforcement by another law.

The above prohibitions do not apply to debtors with regard to property that has been pledged or mortgaged, when the claimant is the creditor under the pledge or mortgage. With regard to the debtor's land and home, the prohibitions do not apply to:

- debtors owing maintenance payments, compensations awarded under tort law and financial deficits to be repaired;
- debtors in other cases expressly stipulated by law.

Where enforcement is directed against the debtor's salary or other remuneration for work received, or against a pension that exceeds the minimum wage, the following deductions can be made:

1. if the monthly remuneration drawn by the person ordered to pay the above costs exceeds the minimum wage but does not exceed twice the minimum wage: a third if this person does not have any children and a quarter if this person has any children maintained thereby;
2. if the monthly remuneration drawn by the person ordered to pay the above costs exceeds twice the minimum wage but does not exceed the quadruple amount of the minimum wage: half if this person does not have any children and a third if this person has any children maintained thereby;

3. if the monthly remuneration drawn by the person ordered to pay the above costs exceeds four times the minimum wage: the amount in excess of twice the minimum wage if this person does not have any children and the amount in excess of two and a half times the minimum wage if this person has any children maintained thereby;

In these cases, the monthly salary or remuneration is calculated after tax and mandatory social insurance payments have been deducted. However these limitations do not apply to claims arising from maintenance payments. In this case, the amount awarded in maintenance is deducted in full and the deductions from the salary or any other remuneration for work or a pension for other liabilities of the person ordered to pay maintenance arrears are made from the remainder of their total income. Enforcement against maintenance claims is not allowed. Enforcement against scholarships is allowed solely in respect of claims arising from maintenance payments.

Any waiver by a debtor that is a natural person of the protections granted to their personal property, salary or other remuneration for work or pension, is invalid.

Articles 22h and 63a(2) of the Underground Natural Resources Act lay down the requirements for the financial securities, which the operator, permit holder or concessionaire must provide to the Minister of Energy prior to commencing operations under the licence, and in particular: an irrevocable bank guarantee issued in favour of the Minister of Energy; a fiduciary account in a bank indicated by the operator and acceptable to the Minister of Energy; an insurance policy naming the Minister of Energy as beneficiary; a documentary letter of credit under which funds may only be drawn in order to perform the activities specified or another statutory security consulted with the Minister of Energy.

Article 60(2) of the Waste Management Act lays down the requirements for the securities to be provided in order to cover future costs for landfill closure and aftercare as follows: monthly deductions paid into a fiduciary account of the Regional Environment and Water Inspection Service (RIOSV) responsible for the area in which the landfill is situated; monthly deductions paid into a special-purpose account blocked until all measures relating to landfill closure and aftercare have been completed and approved, except when the use of the deposited funds is expressly permitted, or a bank guarantee issued in favour of the competent RIOSV responsible for the area in which the landfill is situated.

The final meeting of creditors adopts a resolution on the unsellable personal property in the insolvency estate and may decide that personal property of negligible value or claims that would be unreasonably difficult to collect be restored to the debtor.

After all debts have been paid in full the remainder of the insolvency estate is restored to the debtor.

4 What powers do the debtor and the insolvency practitioner have, respectively?

The debtor and the receiver have the following rights in insolvency proceedings:

- to raise objections against the balance sheet and report drawn up by the liquidator, where proceedings have been opened against a company in liquidation. The court rules on the objection within a period of 14 days by a ruling that is not subject to appeal;
- to request that the court proclaim the debtor insolvent and order it to cease trading either from the date of the ruling opening insolvency proceedings or from a later date, which, must, however, be before the time-limit for proposing a recovery plan has elapsed, when it is evident that continued operation would harm the insolvency estate;
- to request that the court admit the precautionary measures envisaged by law in order to secure the available assets of the debtor;
- to propose a recovery plan;
- to request that the court call a meeting of the creditors.

The actions of the debtor and the receiver are documented in a public register that may be kept in electronic form and is available at the registry of the insolvency court.

The debtor, their representative and the receiver may not take part, either directly or through a stand-in or another related party, in bidding sessions or take part as purchasers in auctions for the sale of personal property or property rights included in the insolvency estate. When a property right is acquired by an ineligible bidder, the sale is null and void and the money paid by the purchaser is retained and used to satisfy creditors' claims.

After the court has opened insolvency proceedings or imposed anticipatory and precautionary measures, the debtor continues to trade under the supervision of the receiver and may conclude new contracts only with the prior consent of the receiver and on condition that they continue to comply with the measures ordered in the ruling opening insolvency proceedings.

The court may strip the debtor of the right to manage and dispose of their property and grant that right to the receiver, if it finds that the actions of the debtor are detrimental to the interests of creditors.

Debtor

Upon becoming insolvent or overindebted, a debtor, must apply to the court for permission to open insolvency proceedings within a period of 30 days. The application is filed by the debtor, the debtor's heir, a governing body or proxy or liquidator of the commercial undertaking or by a partner with unlimited liability. When the application is filed by a proxy, an express power of attorney is required. In the application, the debtor may propose a recovery plan and designate a person who satisfies the requirements laid down for receivers to be appointed, if the court orders that insolvency proceedings be opened.

The debtor, acting in person or through an authorised representative, may take any necessary procedural actions in the insolvency proceedings, and in proceedings instituted in respect of declaratory judgment actions and convalidation claims, except those strictly within the remit of competence of the receiver.

Under certain conditions the debtor and their family are entitled to maintenance payments. The amount of the payment is determined by the court and constitutes an expense of the insolvency procedure.

A debtor may participate in the creditors' meetings if they consider it necessary.

Acting on a motion from the debtor, the court may cancel a resolution of the meeting of creditors, if it is unlawful or highly detrimental to the interests of some of the creditors.

The debtor may file a written objection, with a copy to the receiver, against any claim admitted or rejected by the receiver within 7 days of publication of the lists of admitted and rejected claims in the Commercial Register. The debtor may bring a declaratory action pursuant to Article 694 of the Commerce Act within 14 days of the publication of the court order approving the list in the Commercial Register, if the court dismisses the debtor's objection against a claim approved by the creditor or has included a claim in the list of list of approved claims.

The debtor may ask the court to remove the appointed receiver if the receiver fails to discharge their duties or acts in a manner that harms the interests of the creditor or the debtor.

The debtor may contest the writ of award issued by the court in the sale of personal property and property rights in the insolvency estate.

The debtor may file a written objection with the court against the distribution account and contest the injunction by which the account was approved.

The debtor may request that the court, at the time of approving the recovery plan by a dedicated ruling or at a later date, with a view to ensuring asset preservation and enabling the implementation of the plan, designate assets that the debtor may dispose of with the prior consent of the supervisory body or, if there is no supervisory body, with the prior consent of the court or replace one or more members of the supervisory board.

Under Article 740 of the Commerce Act, a debtor may at any stage in the proceedings conclude an agreement with all creditors with admitted claims to settle their monetary claims. In this case, the receiver does not represent the debtor as a party. If the debtor defaults on its obligations under the agreement, creditors whose claims account for at least 15 percent of the total amount of claims may request that insolvency proceedings be resumed.

The debtor may request that insolvency proceedings be resumed within one year from the date of entry of the ruling to stay proceedings in the Commercial Register, having ascertained that sufficient assets are available or having deposited the amount necessary to prepay initial litigation expenses.

The debtor may ask the court to resume stayed proceedings within one year from the date of the order to stay proceedings, if during that period amounts set aside for contested claims are released or assets unknown during the insolvency proceedings are discovered.

The debtor may apply to the court to be granted restitutio in integrum in respect of its restorable rights, if it has paid all debts admitted in the proceedings in full, including the interest and expenses incurred. The debtor's rights are restored without all debts being paid in full if the insolvency was caused by adverse business and economic developments. The rights of partners with unlimited liability are restored under the same conditions. The court ruling by which restitutio in integrum is granted is not open to appeal. The debtor has 7 days in which to contest a ruling rejecting their application. The final ruling is entered in the case-file of the insolvent trader kept by the Commercial Register.

The debtor may object to the final report of the receiver drawn up prior to the termination of their appointment within 7 days from the date on which the report is presented to the court. The court rules on the report within 14 days and its ruling is not open to appeal.

The debtor may receive the remainder of the insolvency estate, if any, after full and final settlement of their debts.

When a creditor's insolvency application is rejected by a final judgment, the debtor, whether a natural or a legal person, is entitled to compensation if the creditor acted with intent or gross negligence. Compensation is due for all material and immaterial damage suffered as a direct consequence of the wrongful act. If the debtor's actions had a contributory effect to the damages, the compensation may be reduced. If the application seeking permission to open insolvency proceedings was filed by several creditors, they are jointly and severally liable.

Not later than 14 days from the opening of insolvency proceedings the debtor must provide the following to the court and the receiver:

1. the necessary information about the business of the company and the debtor's property;
2. a list of the payments in cash or by bank transfer in an amount exceeding BGN 1200 made in the last 6 months before the commencement of insolvency;
3. a list of the payments made by the debtor to related parties during the last twelve-month period before the commencement of insolvency;
4. a notarised statement listing all items of personal property, property rights and receivables, and the names and addresses of their debtors.

The debtor provides the court or the receiver with information about its assets and business, including all relevant documents, within a period of 7 days from the date of the written request to do so. The information must be up-to-date as at the date of the request. Otherwise the court imposes a fine.

Not later than one month from the date of the ruling to stay insolvency proceedings due to non-payment of the initial expenses of the insolvency procedure, the debtor must terminate the employment contracts of its workers and employees, notify the competent local directorate of the National Revenue Agency, issue the requisite documents attesting to the work experience and length of service for social insurance purposes of said workers and employees, compile a reference document listing all persons with guaranteed claims under the Guaranteed Claims of Workers and Employees in the Event of Employer Insolvency Act and the bylaws laying down the rules for its implementation, and hand over the company records to the competent local office of the National Insurance Institute.

The debtor submits at least one quarterly report on its activities and the actions taken to implement the recovery plan to the supervisory body specified in the plan and notifies it of any circumstances that may have a material impact on recovery.

The debtor's governing bodies must obtain the prior consent of the supervisory bodies before deciding on the following:

- the restructuring of the debtor;
- the closure or transfer of undertakings or substantial parts thereof;
- property transactions other than routine actions and transactions relating to the management of the debtor's business;
- a substantial change in the debtor's business;
- substantial organisational changes;
- establishing long-term cooperation that is essential for recovery plan implementation or discontinuing such cooperation;
- opening or closing branches.

The court-approved recovery plan is mandatory for the debtor, which should implement the structural changes provided for without delay.

The debtor must refrain from the actions and transactions listed in Articles 645, 646 and 647 of the Commerce Act within the time periods and upon the conditions specified therein, otherwise these actions and transactions may be declared invalid in respect of the creditors of the insolvency estate.

Receiver

Under Bulgarian legislation a receiver is a natural person who satisfies the following requirements:

1. has not been convicted as an adult of a deliberate indictable offence, unless full judicial rehabilitation has been granted;
2. is not married to and is not a blood relative of the debtor or creditor in the direct line of descent; is not a relative of the debtor or creditor in the collateral line up to six times removed and by affinity up to three times removed;
3. is not a creditor in the insolvency proceedings;
4. is not an insolvent debtor who has not been granted restitutio in integrum;
5. does not have any relations with the debtor or with a creditor that may give rise to reasonable suspicion as to their impartiality;
6. has a university degree in economy or law and at least 3 years of relevant professional experience;
7. has successfully passed a competence examination in accordance with the rules and procedure laid down in a dedicated regulation and has been included in a list of professionals who meet the criteria for appointment as receivers, approved by the Minister for Justice and published in the State Gazette;
8. has not been removed as receiver due to a breach of their duties or actions that have harmed the interests of creditors or the debtor; has not been struck off the register kept by the Central Bank or removed at the discretion of the Fund or on a proposal from the Minister of Finance for a breach of duty or action detrimental to the interests of creditors;
9. has not been subject to the measures envisaged in Article 65(2)(11) of the Banks Act or Article 103(2)(16) of the Credit Institutions Act.

The Minister of Justice strikes a receiver off the list when a breach of the powers and duties vested in a receiver's office has been ascertained, regardless of whether or not the breach was established by the insolvency court, and arranges for the amended list to be published in the State Gazette.

The powers vested in the receiver may be exercised by several persons. In this case, decisions are adopted unanimously and actions are performed jointly, unless the creditors or, in the event of a dispute between the parties exercising the receiver's duties, the court decide otherwise. Where the powers vested in the receiver are exercised by several persons, who take decisions unanimously and act jointly, their liability is joint and several.

The receiver must pay an annual fee in respect of continual professional training. A receiver who fails to pay the requisite fee in a timely manner is struck off the register. Not later than three days after the designation of a receiver and before they have been confirmed, the receiver must obtain professional liability insurance for the entire duration of the insolvency proceedings in order to be protected against claims for damages arising from a breach of the duties of their office.
The Minister of Justice, acting jointly with the Minister of Economy, must organise annual training courses for receivers.
According to the Commerce Act receivers fall into the following categories:
- provisional receivers appointed by the ruling opening insolvency proceedings;
- provisional receivers appointed as a precautionary measure;
- permanent receivers, who may be elected by the meeting of creditors or, where the meeting of creditors is unable to agree on an appointment, by the court;
- assistant receivers;
- ex officio receivers, appointed at the time of discharge of a permanent receiver, who perform their functions until a new permanent receiver has been appointed.
The powers of the provisional receiver are identical to those of the permanent receiver. In addition, the provisional receiver draws up the following documents within 14 days of the date on which insolvency proceedings are instituted:
- a list of creditors based on the debtor's books, indicating the amount of their claims and which creditors are or were related to the debtor in the last three years prior to the opening of insolvency proceedings on the basis of the information available in the Commercial Register and in the debtor's books;
- a certified copy of the debtor's books;
- a written report on the reasons for the insolvency, the current assets of the debtor, the measures taken to preserve them and the possibilities for rescuing the company.
The provisional receiver must attend the first meeting of creditors.
The insolvency court appoints the receiver elected at the first meeting of creditors, if they satisfy the stated requirements and have provided their prior written consent in the form of a notarised statement, and determines the date on which the receiver is to take up their duties. At the time of their appointment, the receiver files a notarised statement attesting to the presence or absence of certain legal impediments to performing the duties of their office set out in the Commerce Act, such as being a shareholder in a limited liability or joint-stock company, concurrently performing the duties of a liquidator and receiver and holding other paid offices. The receiver must notify the insolvency court immediately if any of these circumstances occur. The receiver must take office on the date set by the court. Where they fail to do so, the court replaces the appointed receiver within 7 days with another person selected from those nominated by the first meeting of creditors. If no alternative nominations were put forward, a receiver from the relevant list is appointed and a new creditors' meeting is called. If the creditors' meeting is unable to reach an agreement on the appointment of a receiver or unable to decide on their remuneration, the receiver's remuneration is determined by the court.
The court removes the receiver in the following cases:
1. at the written request of the receiver;
2. upon the receiver becoming legally incapacitated;
3. if the receiver no longer satisfies the requirements laid down by law;
4. at the request of the creditors holding more than half of the total sum of all claims;
5. by a decision adopted by the creditors' meeting;
6. in cases where the receiver is no longer capable of exercising their powers;
7. in the event of death.
The court, acting on its own motion or on a proposal from the debtor, the creditors' committee or a creditor, may remove the receiver at any time, if they fail to perform their duties or act in a matter that harms the interests of the creditor or debtor. A receiver discharged at their request must continue to perform their duties until a new receiver has been appointed. The order by which the receiver is discharged is subject to immediate enforcement and an appeal against it does not have a suspensive effect. The annulment of the discharge order does not reinstate the party discharged as receiver in the insolvency proceedings. The court calls a creditors' meeting tasked with nominating a new receiver. Until a replacement has been selected, the functions of a receiver are performed by an ex officio receiver appointed by the court.
The receiver, not later than 3 days after taking office, requests that the property of the debtor placed under seal be released and compiles an inventory of the debtor's real and personal property, cash, valuables, securities, contracts, claims, etc., including items of personal property in possession of third parties. The receiver compiles the inventory and, if other assets are found at a later date, an additional inventory is compiled. From the moment of compiling an inventory the receiver is responsible for the assets detailed therein, unless they are handed over to the debtor or to a third party for safekeeping.
The receiver has the following rights:
1. to represent the undertaking;
2. to manage its current affairs;
3. to supervise the debtor's business, if its right to conduct the business has been restricted;
4. to obtain and keep the books and handle the business correspondence of the undertaking;
5. to make enquiries and identify the debtor's assets;
6. in the cases provided for by law, to request that contracts to which the debtor is a party be terminated, cancelled or annulled;
7. to participate in lawsuits to which the enterprise is a party and file lawsuits on its behalf;
8. to collect money owed to the debtor and deposit the proceeds in a special account;
9. with the permission of the court, to dispose of the debtor's money deposited in bank accounts, when necessary for the administration and preservation of the debtor's assets;
10. to make enquiries in order to identify the debtor's creditors;
11. acting on a court order, to call and organise the creditors' meetings;
12. to propose a recovery plan;
13. to perform the actions necessary to terminate the debtor's ownership interests in other companies;
14. to convert the insolvency estate into money;
15. to perform other actions prescribed by law and ordered by the court.
All government bodies and institutions have an obligation to assist the receiver in the performance of their duties.
As from the date on which the ruling opening insolvency proceedings becomes final, money paid in settlement of the debtor's claims is accepted by the receiver.

The receiver arranges for the lists of admitted and rejected claims, along with the financial reports of the debtor, to be published into the Commercial Register as soon as they are finalised and makes them available to the creditors and the debtor at the registry of the court.

In order to augment the size of the insolvency estate, the receiver collects unpaid shares and contributions from partners in limited liability companies and may file a claim under Articles 645, 646 and 647 of the Commerce Act and Article 135 of the Obligations and Contracts Act in connection with the insolvency proceedings, bringing corresponding actions for performance in connection with that claim. When the claim is filed by a creditor, the court constitutes the receiver as co-plaintiff sua sponte. The receiver must participate in proceedings instituted in respect of a declaratory action brought by the debtor or a creditor under Article 694 of the Commerce Act.

The receiver arranges the sale of property rights included in the insolvency estate after obtaining permission from the court, draws up a distribution chart of the available amounts to be distributed between the creditors holding claims under Article 722(1) of the Commerce Act depending on their rank, privileges and collateral, arranges for the chart to be entered in the Commercial Register and makes payments in accordance with the chart. The receiver, acting on a court order, deposits with a bank the amounts set aside at the time of final distribution for uncollected or contested claims.

If the debtor agrees settlements with all creditors with admitted claims, the receiver does not represent the debtor as a party.

The receiver must exercise the powers of their office in a prudent and diligent manner. The receiver may not delegate their powers to a third party without the explicit permission of the court. The receiver may not negotiate on behalf of the debtor either in person or through a related party. The receiver may not acquire in any way whatsoever, either directly or through another person, personal property or property rights from the insolvency estate. This limitation applies to the spouse of the receiver, their relatives in the direct line of descent, and their relatives in the collateral line up to six times removed and by affinity up to three times removed. The receiver may not disclose any facts, data and information that have come to their knowledge in connection with the discharge of the powers and duties vested in their office.

If a receiver fails to perform their duties or performs them, the court may fine the receiver up to one month’s remuneration. The receiver is liable to pay compensation in an amount equal to the interest determined by operation of law for any delay in depositing amounts received in a bank. The receiver is liable to compensate the debtor and creditors for any damage wrongfully caused in the performance of their duties.

Upon termination of their mandate, the receiver must immediately hand over the books, ledgers and accounts, along with any property received for safekeeping, to the new receiver or to a person designated by the court and, if the recovery plan is accepted for consideration [by the creditors’ meeting], to the debtor. The powers of the receiver end with the closure of the insolvency proceedings. The receiver hands over the books and the remainder of the debtor’s property to its governing body. The rights of the receiver are reinstated if it is decided to reopen insolvency proceedings.

In 2017, the figure of the assistant receiver was introduced. An assistant receiver is a natural person who satisfies all the requirements laid down for receivers, except for the requirement to have: relevant professional experience of at least two years; to have passed a competence examination in accordance with the procedure laid down in a dedicated regulation; and to be included in a list of professionals who may be appointed as receivers, adopted by the Minister for Justice and published in the State Gazette. Assistant receivers must not at any time have been subject to the measures envisaged in Article 65(2)(11) of the Banks Act or Article 103(2)(16) of the Credit Institutions Act.

In order to be appointed as an assistant receiver, applicants must pass a competence examination in accordance with a procedure stipulated in a regulation. The Minister of Justice issues an order on the inclusion of assistant receivers who satisfy the requisite competence requirements in a dedicated list.

Assistant receivers may take certain actions within the remit of competence of the receiver, acting on instructions from the receiver and in accordance with the relevant procedure (on the grounds of authorisation with the express permission of the court). The assistant receiver may sign certain documents relating to the work of the receiver, adding the word ‘assistant’ to their signature. The assistant receiver is jointly and severally liable with the receiver for any damage wrongfully caused in the performance of their duties. The relations between a receiver and assistant receiver are governed by a contract. In the absence of special rules, the activity of assistant receivers is governed by the rules applicable to receivers.

The receiver appointed by a judgment delivered by a foreign court exercises the rights vested in their office in the country where insolvency proceedings were opened as long as their conduct is not in breach of public order in the Republic of Bulgaria. At the request of the receiver appointed by the foreign court the Bulgarian court may open ancillary insolvency proceedings against a trader proclaimed insolvent by a foreign court, if the trader possesses significant assets in Bulgaria. The approval of the recovery plan in the ancillary insolvency proceedings requires the consent of the receiver in the main proceedings. A motion to set aside a transaction brought by the receiver in the main or ancillary insolvency proceedings is deemed to have been brought in both proceedings.

5 Under which conditions may set-offs be invoked?

In insolvency proceedings, a creditor’s claim may be set off against the creditor’s liability to the debtor, if prior to the date of the ruling opening insolvency proceedings both debts existed, were mutually enforceable and of the same kind, and the creditor’s claim had fallen due. If the creditor’s claim falls due during the insolvency proceedings or as a consequence of the ruling proclaiming the debtor’s insolvency, provided that as a result of the ruling both debts are ranked in the same class, the creditor may set off its debt only after the debt has fallen due or the two debts have acquired the same rank. The set-off declaration must be notified to the receiver.

A set-off may be invalidated in respect of the creditors of the insolvency estate, if the creditor acquired the claim and incurred the debt before the date of the ruling opening insolvency proceedings, knowing at the time of acquiring the claim or incurring the debt that the debtor is insolvent or overindebted or that an application to open insolvency proceedings has been filed. Regardless of the time when the mutual debts were incurred, a set-off effected by the debtor after the declaration of insolvency or overindebtedness, but not earlier than one year before the date on which the application was filed, is invalid with respect to the creditors of the insolvency estate, except for the part of the debt which the creditor would receive at the time of distribution following asset conversion into money.

The action to invalidate a set-off may be brought by the receiver or, if no action is brought by the receiver, by any creditor of the insolvency estate within a period of one year from the date on which insolvency proceedings were opened or the date of the ruling reopening stayed insolvency proceedings. Where the debt was set off after the date of the ruling opening insolvency proceedings, the time period for bringing an action to invalidate the set-off commences from the set-off date.

The opening of insolvency proceedings has a suspensive effect on all lawsuits and arbitration proceedings in respect of property, civil and commercial disputes to which the debtor is a party (except for employment disputes in respect of monetary claims of the debtor). This provision does not apply if, at the date of opening insolvency proceedings in another case in which the debtor is a respondent, the court has agreed to examine an objection raised by the debtor against a set-off.

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

Not later than one month from the date of the ruling to stay insolvency proceedings due to non-payment of the initial expenses of the insolvency procedure (ruling pursuant to Article 632(1) of the Commerce Act), the debtor must terminate the employment contracts of its workers and employees, notify the competent local directorate of the National Revenue Agency, issue the requisite documents attesting to the work experience and length of service for social

insurance purposes of said workers and employees, compile a reference document listing all persons with guaranteed claims under the Guaranteed Claims of Workers and Employees in the Event of Employer Insolvency Act and the bylaws laying down the rules for its implementation, and hand over the company records to the competent local office of the National Insurance Institute.

The receiver may terminate any contract to which the debtor is a party on the grounds of partial or fundamental contract non-performance. The receiver gives a notice of contract termination 15 days in advance and must respond to requests for information received from the other party as to whether the contract will be terminated or remain valid within the same period. Where the receiver does not respond to a request, the contract is deemed to have been terminated. If a contract is terminated, the other party is entitled to compensation for damages. No obligation arises for the receiver, when a contract under which the debtor makes payments at regular intervals remains valid, to settle any arrears thereunder that predate the ruling opening insolvency proceedings.

As from the date on which the ruling opening insolvency proceedings becomes final, money paid in settlement of the debtor's claims is accepted by the receiver. The settlement of a debtor's claim after the date of the ruling opening insolvency proceedings, but before the date of entry of said ruling, is valid if the party that settled the claim was unaware that insolvency proceedings had been opened or, if they were aware of the proceedings, the economic benefit by which the claim was settled was included in the insolvency estate. Good faith is presumed until proven otherwise.

According to Article 646 of the Commerce Act the following are invalid with respect to creditors, if effected after the date of the ruling opening insolvency proceedings in breach of the established rules of procedure:

- the settlement of a debt incurred before the ruling opening insolvency proceedings;
- a pledge or mortgage created on a right or an asset of personal property from the insolvency estate;
- a transaction involving a right or an asset from the insolvency estate.

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

Before ruling on the application to open insolvency proceedings the court may order, at the request of a creditor or on its own motion and if necessary to preserve the debtor's assets, that enforcement proceedings against the debtor's assets, except for enforcement proceedings instituted pursuant to the Tax and Social Insurance Procedure Code, be stayed. When the measures are sought by a creditor, the court admits them, if the creditor's motion is supported by compelling written evidence and/or if a security in an amount determined by the court is provided to compensate the debtor for any damages in the event that the debtor is subsequently found not to be insolvent or overindebted. The court may lift the precautionary measure imposed, if it is no longer necessary for estate preservation.

The ruling is notified to the party subject to the measures and to the party that sought their imposition. It is subject to immediate enforcement and may be appealed within a period of 7 days from the date of receipt of the notice. Appeals do not have a suspensive effect. Precautionary measures are deemed to have been lifted from the date on which a ruling to reject the application to open insolvency proceedings is entered. The precautionary measure imposed remains effective until the date of the ruling opening insolvency proceedings. From this date its effect is cancelled by the effect of the ruling opening insolvency proceedings.

The ruling opening insolvency proceedings has a suspensive effect on enforcement proceedings against the assets included in the insolvency estate, except for the assets envisaged in Article 193 of the Tax and Social Insurance Procedure Code. Where a payment in favour of a claimant is made between the date on which enforcement proceedings were stayed and the entry of the ruling opening insolvency proceedings, the amount paid is returned to the insolvency estate. Where there is a danger of creditors' interests being harmed and steps are taken to realise the security in favour of a secured creditor, the court may allow the continuation of proceedings on condition that the portion of the proceeds that exceeds the security amount is added to the insolvency estate. If a claim is brought and admitted to the insolvency proceedings, stayed proceedings are terminated. The garnishments and foreclosures imposed in the enforcement proceedings are unenforceable against the claims of the creditors of the insolvency estate. The imposition of precautionary measures pursuant to the Civil Procedure Code or the Tax and Social Insurance Procedure Code on the debtor's property after insolvency proceedings have been opened is not allowed.

The assets referred to in Article 193 of the Tax and Social Insurance Procedure Code are the assets subject to precautionary measures already imposed in enforcement proceedings for the recovery of public debt which commenced prior to the opening of insolvency proceedings. The assets in question are realised by the public bailiff in accordance with the rules and procedure laid down in the Tax and Social Insurance Procedure Code. When the proceeds of asset realisation are insufficient to cover the full amount of the claim, the interest accrued and charges incurred in the public enforcement proceedings, the remainder of the claim of the central government or municipality is satisfied in accordance with the general rules. When the proceeds of asset realisation exceed the full amount of the claim, the interest accrued and charges incurred in the public enforcement proceedings, the public bailiff pays the remainder of the proceeds into the account of the insolvency estate. If the public bailiff fails to realise the assets within a period of 6 months from the commencement of insolvency proceedings, the asset passes from the public bailiff to the receiver and is realised in the insolvency proceedings.

Once insolvency proceedings have been opened, no lawsuits in respect of property disputes under civil or commercial law may be brought before courts of law or arbitration tribunals other than in the following cases:

- to protect the rights of third parties who own assets included in the insolvency estate;
- employment disputes;
- monetary claims secured by assets owned by third parties.

The following parties may bring declaratory actions under Article 694 of the Commerce Act seeking the validation of an existing claim that has not been admitted in the insolvency proceedings or challenging the existence of an admitted claim:

- the debtor, if the court rejects an objection against a claim admitted by the receiver or includes that claim in the list of admitted claims;
- a creditor with an unadmitted claim, if the court leaves the objection without consideration or excludes the claim from the list of admitted claims;
- a creditor, if the court rejects its objection against the admission of another creditor's claim or includes another creditor's claim in the list of admitted claims.

The convalidation claim may be filed within a period of 14 days from the date on which the ruling on approval of the list of admitted claims is published in the Commercial Register. The receiver must participate in the proceedings. The entry into force of the ruling has determinative effect for the debtor, receiver and all creditors in the insolvency proceedings.

The validity of a sale of assets included in the insolvency estate in order to convert them into money may be challenged by civil action, if the asset was acquired by a party that did not have the right to place bids in the auction or if the sale price is not paid. In the latter case, the purchaser may counter the action by paying the amount due, together with the interest accrued from the day on which they were declared purchaser of the asset sold.

When a party is no longer in possession of a property right after the sale of an asset in order to convert it into money and the acquisition of that asset and the purchaser's entry into possession, it may seek remedy solely by bringing an action in respect of ownership.

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

The commencement of insolvency proceedings has a suspensive effect on all lawsuits and arbitration proceedings in respect of property disputes under civil or commercial law to which the debtor in a party, except for employment disputes in respect of monetary claims of the debtor. This provision does not apply if, at the date of opening insolvency proceedings in another case in which the debtor is the defendant, the court has admitted to hearing an objection against

a set-off raised by the debtor. Stayed proceedings are reopened if the claim is admitted to the insolvency proceedings, i.e. it is included in the court-approved list of admitted claims.
Stayed proceedings are resumed with the participation of: (1) the receiver and creditor, if the claim is not included in the list of claims admitted by the receiver or in the court-approved list of claims or (2) the receiver, creditor and the party that raised an objection, if the claim is included in the list of claims admitted by the receiver but a challenge has been raised against its inclusion. In this case, the ruling has a determinative effect for the debtor, the receiver and all creditors with claims against the insolvency estate.
Ongoing proceedings against the debtor in respect of monetary claims secured by third-party property may not be stayed.

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

A creditor with a claim against the debtor under a commercial transaction may file an insolvency application and join the proceedings instituted on an insolvency application filed by another creditor. In the application, the debtor may also propose a recovery plan and designate a person who satisfies the stated requirements for receivers and may be appointed, if the court orders that insolvency proceedings be instituted. The creditor may ask the court to order anticipatory and precautionary measures before it has ruled on the insolvency petition, if necessary in order to preserve the property of the debtor.
When it is evident that the continued operation of the enterprise would be detrimental to the insolvency estate, the court may, on a motion from a creditor, order that operations be discontinued, either from the date of the ruling opening insolvency proceedings or from a later date, but before the period in which a recovery plan must be proposed has elapsed.
When the available assets of the debtor are insufficient to cover the initial expenses of the insolvency procedure, the court determines an amount to be prepaid within a certain period by a creditor in order to open insolvency proceedings. If the debtor's assets are insufficient or initial expenses have not been prepaid, the creditor may seek the reopening of stayed insolvency proceedings within one year from the entry of the order granting a stay of proceedings.
Creditors may contest the court orders and rulings given in the insolvency proceedings and the actions and decisions of the governing bodies of the debtor, if the preconditions envisaged in the Commerce Act have been satisfied.
In insolvency proceedings appearance notices and summons are served on creditors constituted as parties in the proceedings at their respective address in Bulgaria. If a creditor has changed its address without notifying the court, all summons and papers are appended to the case-file and considered to have been duly served. When a creditor does not have an address in Bulgaria and its head office is in another country, it must provide an address for service in Bulgaria. Where no address for service in Bulgaria is provided, the summons is published in the Commercial Register. Following the commencement of insolvency proceedings, the incontestable acts of the court not subject to entry into the Commercial Register or notification to the parties in accordance with the Civil Procedure Code are deemed to have been notified to the parties through their entry into the register kept by the court. Where the Commerce Act provides for summons to be served on the parties by means of notices published in the Commercial Register, the invitation, notice or summons must be published at least 7 days before the scheduled date of the meeting or hearing.
The first meeting of creditors is attended by the creditors included in the list compiled by the provisional receiver on the basis of the debtor's books and excerpts from those books and presented at the first meeting. The creditors attend the meeting in person or by proxy authorised to represent the creditor by an express power of attorney. When the creditor is a natural person, the grantor's signature on the power attorney must be notarised. Resolutions are adopted with ordinary majority of the votes of creditors on the list, excluding the votes of creditors currently affiliated with the debtor, creditors who were affiliated with the debtor in the three-year period preceding the opening of insolvency proceedings, and the creditors who acquired claims from parties affiliated with the debtor in the three-year period preceding the opening of insolvency proceedings. The first meeting of the creditors:
- hears the report drawn up by the provisional receiver;
- nominates a permanent receiver and puts forth the nomination to the court;
- elects a creditors' committee.

No meeting of creditors will be called in the following cases:
1. prior to filing an insolvency application, the debtor had failed to submit its annual financial reports for the last three years for publication in the Commercial Register;
2. the debtor does not fulfil its obligation to cooperate with the provisional receiver and refuses to hand over its books or its books have been kept in a manner that is manifestly improper.

In this case, the provisional court-appointed receiver performs their duties until a permanent receiver is appointed by the meeting of creditors after the court has approved the claims admitted by the receiver.
The meeting of creditors may be called at the request of the debtor, receiver, the creditors' committee or the creditors holding one-fifth of the total amount of admitted claims. The meeting of creditors is conducted regardless of the number of creditors in attendance and chaired by the judge presiding over the proceedings. For the purpose of adopting resolutions, each creditor has a number of votes corresponding to the share of its claim from the total sum of admitted claims with voting rights granted by the court. Voting rights may also be granted to creditors in resumed lawsuits or arbitration proceedings against the debtor in respect of property disputes under civil or commercial law, if the claim is supported by cogent written evidence; creditors with unadmitted claims who have brought declaratory actions pursuant to Article 694 of the Commerce Act; and creditors with admitted claims against whom an action challenging the existence of the claim has been brought pursuant to Article 694 of the Commerce Act. No voting rights are granted to creditors with unsecured claims in respect of interest arising by operation of law or under a contract and payable after the date of the ruling opening insolvency proceedings, creditors with claims in respect of loans provided to the debtor by a partner or shareholder, and creditors with claims arising from donations or expenses incurred by the creditor in the proceedings, except in the case of prepaid expenses, when the debtor's assets are insufficient to cover the expenses paid. Resolutions are adopted by an ordinary majority, unless otherwise provided in the Commerce Act.
The meeting of creditors:
- hears the report on activities of the receiver;
- hears the report of the creditors' committee;
- elects a receiver, if no receiver has been elected;
- adopts decisions on the discharge of the receiver and their replacement;
- determines the current remuneration, modifies the remuneration and determines the final remuneration of the receiver;
- elects a creditors' committee, where no committee has been elected, or makes changes to its composition;
- proposes to the court the amount of the maintenance payment to be granted to the debtor and their family;
- determines the manner in which the debtor's assets will be converted into money, the method and conditions for property valuation, the selection of valuators and their remuneration.

If the meeting of creditors is unable to decide on the appointment of a receiver, the appointment is made by the court and if it is unable to decide on the manner and rules for the conversion of the debtor's property into money, the decision is made by the receiver. The court discharges the receiver on a motion from the creditors holding more than half of the total amount of all claims. The court, acting on a motion from a creditor, may discharge the receiver at any time, if they fail to perform the duties of their office or act in a matter that harms the interests of the creditor or debtor.

The meeting of creditors may adopt a decision on the appointment of a supervisory body with powers to exercise control over the activities of the debtor for the effective period of the recovery plan or a shorter period, including when this is not expressly envisaged in the recovery plan.

With the agreement of the meeting of creditors, the court may permit the receiver to sell personal property of the debtor prior to authorising the conversion of the insolvency estate into money, if the cost of storage of such personal property until estate conversion is ordered in accordance with the general procedure exceeds its value. Other assets included in the insolvency estate may be sold with the agreement of the meeting of creditors, if necessary to cover the cost of the insolvency proceedings and if none of the creditors has agreed to prepay the expenses after being invited to do so.

Acting on a proposal from the receiver and in line with the resolution adopted by the meeting of creditors, the insolvency court authorises the sale of the debtor's assets through direct negotiation or through an intermediary, when the personal property and property rights, having been put on sale in their entirety, as separate parts or individual items and rights, failed to be sold because of a lack of buyers or the withdrawal of a buyer.

The resolutions of the meeting of creditors are binding on all creditors, including those not present at the meeting. Acting on a motion from the creditor, the court may cancel a resolution of the meeting of creditors, if it is unlawful or highly detrimental to the interests of some of the creditors.

The meeting of creditors may elect a creditors' committee comprising at least three and not more than nine members. The creditors' committee must comprise members who represent the secured and non-secured creditors, except those referred to in Article 616(2) of the Commerce Act (the creditors whose claims are satisfied after the claims of all other creditors have been satisfied in full). The creditors' committee assists and supervises the actions of the receiver in relation to the management of the debtor's assets, conducts checks on the commercial records of the debtor and available cash funds, gives opinions on the continuation of the business of the debtor's enterprise and on the remuneration of the provisional and ex officio receiver, the actions taken in relation to estate conversion into cash and on the liability of the receiver in other cases. The members of the creditors' committee are entitled to remuneration for the account of the creditors in an amount determined at the time of their election.

A member of the creditors' committee may not acquire in any way whatsoever, either directly or through another person, personal property or property rights from the insolvency estate. This limitation applies to the spouse of a member of the creditors' committee, their relatives in the direct line of descent, and their relatives in the collateral line up to six times removed and by affinity up to three times removed.

Stayed lawsuits and arbitration proceedings in respect of property disputes under civil and commercial law to which the debtor is a party are resumed and proceedings continue with the participation of the receiver and creditor, if the claim is not included in the list of claims admitted by the receiver or in the list of claims approved by the court or the receiver, creditor and the party that raised the objection, if the claim is included in the list of claims admitted by the receiver but a challenge has been raised against its inclusion.

The insolvency court, acting on a motion from the creditor, may admit the precautionary measures prescribed by law in order to secure the available assets of the debtor.

The creditor may set off a debt it owes to the debtor if the conditions stipulated in Article 645 of the Commerce Act have been satisfied. In order to augment the size of the insolvency estate, the receiver may file a lawsuit pursuant to Article 645, 646 and 647 of the Commerce Act and Article 135 of the Obligations and Contracts Act in connection with the insolvency proceedings and bring actions for performance in connection with those claims. When a claim has been filed by creditor, a second filing in respect of the same claim will not be allowed. However, the second creditor may ask the court to constitute it as co-plaintiff before the first hearing in the case.

The creditor may ask the receiver to provide the register and the report for consultation and draw up a special report on matters of interest not discussed in the report for the respective period. The creditor may enter an objection against the written report of the receiver in connection with their discharge within 7 days from the date on which the report is presented.

Creditors may submit their claims to the insolvency court in writing. They may submit written objections to the court against claims, either admitted or unadmitted by the receiver, within 7 days from the date on which the list is published in the Commercial Register and bring declaratory actions pursuant to Article 694 of the Commerce Act within 14 days from the date on which the court ruling approving the list is published in the Commercial Register.

Creditors may submit their claims to the insolvency court in writing. They may submit written objections to the court against claims, either admitted or unadmitted by the receiver, within 7 days from the date on which the list is published in the Commercial Register and subsequently file declaratory actions seeking the validation of unadmitted claims or challenging the existence of admitted claims within 7 days from the date on which the court ruling approving the list is published in the Commercial Register.

A recovery plan may be proposed by the creditors holding at least one-third of secured claims and the creditors holding at least one-third of unsecured claims, except for the following creditors: those holding claims arising from statutory or contractual interest on unsecured debts, which became due after the date of the ruling opening insolvency proceedings; creditors holding claims arising from loans granted to the debtor by a business partner or shareholder; creditors holding claims arising from donations and from the expenses incurred by a creditor in the insolvency proceedings, except for prepaid expenses, when the debtor's property is insufficient to cover them.

A creditor with an admitted claim or a voting right recognised by the court may propose and vote on (including in absentia, through a notarised letter bearing his signature) a recovery plan for the business operators of the insolvent enterprise of the debtor. Creditors, including those with unadmitted claims for which a declaratory action pursuant to Article 694 of the Commerce Act has been brought before the court, may file an objection to the adopted plan within 7 days from the day on which the plan was adopted.

In case of failure on the part of the debtor to perform its obligations under the plan, the creditors holding at least 15 percent of the total amount of claims converted under the plan may request that insolvency proceedings be reopened.

The creditor may file a written objection against the distribution chart and subsequently appeal the ruling by which the chart was approved by the court.

If the debtor defaults on the extra-judicial agreement concluded with the creditors on the grounds of Article 740 of the Commerce Act, the creditors holding at least 15 percent of the total amount of all claims may ask the court to reopen insolvency proceedings.

The debtor or a creditor holding an admitted claim or a claim validated by civil action may apply for the reopening of stayed insolvency proceedings within one year from the date of the court order to stay proceedings, if during that period amounts set aside for contested claims are released or assets, the existence of which was unknown during the insolvency proceedings, are discovered.

Within a period of one month from the date on which the debtor's application to be granted restitutio in integrum is published in the Commercial Register each creditor holding an admitted claim or a claim validated by civil action may file an objection against it.

At the request of a creditor, the Bulgarian court may institute ancillary insolvency proceedings against a trader proclaimed insolvent by a foreign court, if the trader possesses significant assets in Bulgaria. A creditor who has received partial payment in the main proceedings, participates in the distribution of property in the ancillary proceedings, if the share it would receive exceeds that to be distributed to the other creditors in the ancillary proceedings.

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

The powers of the receiver are as follows: making enquiries and identifying property that belongs to the debtor; participating in lawsuits against the debtor or filing lawsuits on behalf of the debtor; in the cases envisaged by law, requesting that contracts to which the debtor is a party to be terminated, cancelled or annulled; collecting money owed to the debtor and depositing it in a special account; with the permission of the court, disposing of the debtor's money deposited in bank accounts, when necessary for the administration and preservation of the debtor's assets; and converting the assets included in the insolvency estate into cash.

The receiver sells the personal property and property rights included in the insolvency estate in their entirety, as separate parts or individual items and rights after obtaining permission from the court and in line with the decision adopted by the meeting of creditors. Where no such decision has been made, the manner and procedure for the conversion of assets into cash and the rules for their valuation by the selected valuators are decided by the receiver.

The receiver draws up a notice of sale, which contains information about the debtor, a description of the property on sale, the rules and procedure for the sale, the date, time and place of the sale, the deadline for submitting bids during the day and the valuation of the property on sale. The receiver displays the notice prominently on the premises of the municipality in which the head office of the debtor's enterprise is situated and those of the debtor's head office at least 14 days prior to the date of the sale indicated in the notice. In addition, the receiver draws up a protocol detailing the above actions and arranges that the protocol be published in a special bulletin of the Ministry of Economy 14 days prior to the date of the sale specified in the notice.

The sale takes place in the receiver's office or at the address of the head office of the enterprise of the debtor on the date specified in the notice. Bidders who wish to participate in the sale must deposit an advance in the amount of 10 percent of the valuation. Each bidder must indicate the price offered in numbers and words and submit the offer, along with the receipt for the deposit paid, in a sealed envelope. The offers are submitted to the receiver on the day of the sale by the set deadline and entered into the order in which they were received in a dedicated register. Upon expiration of the deadline set the receiver announces the bids received in the presence of the attending bidders and draws up a dedicated record of the proceedings. Bids received from ineligible bidders and those offering a price lower than the valuation, if any, are null and void. The property is sold to the highest bidder. If the highest price was offered by more than one bidder, the purchaser is determined by an auction, which the receiver conducts without delay in the presence of the bidders in attendance. The winning bidder is noted in the record drawn up by the receiver, which is then signed by the receiver and all bidders. The buyer must pay the price offered, having deducted the deposit of 10 percent paid in advance, within 7 days from the date of the sale. When the buyer is a creditor holding an admitted claim or a secured creditor, the receiver draws up a distribution account, indicating the share of the price to be paid by the buyer and retained to satisfy other creditors' claims and the share of the price to be set off against the creditor's claim. In this case, the buyer must pay the amounts to be retained in order to satisfy other creditors' claims as provided for in the distribution account within 7 days from the date on which the account becomes effective or, if there are no other creditors, the amount by which the price to be paid exceeds his claim. If the price fails to be paid within 7 days, the receiver offers the property to the bidder who offered the second highest price, unless he has withdrawn his deposit. With the consent of that bidder, the receiver then declares him purchaser. The receiver repeats the process, if necessary, until the property has been offered to all bidders who offered a price not lower than the valuation.

In the absence of any bidders or if no valid bids are received, or if the buyer fails to pay the price, a new sale notice is published and an auction with open bidding is arranged with an opening price equal to 80 percent of the assessment. The bids are noted in a bidding list and the step is determined by the receiver and indicated in the notice.

When the declared buyer pays the amount due in a timely manner, the court issues an order for entry into possession to the buyer on the day following the payment. The other bidders in the auction and the debtor may contest the order before the court of appeal. If the order for entry into possession is invalidated or the sale is declared null and void, another auction is arranged after a new notice has been published.

The buyer is entered into possession of the property right by the receiver on the basis of an effective order for entry into possession and a receipt attesting to the payment of the requisite property transfer and conveyancing fees. The risk of loss of the property right is borne by the buyer and the expenses for its preservation until the buyer's entry into possession are covered from the insolvency estate.

When enforcement proceedings have been instituted against a jointly owned property right in respect of a debt of some of the owners, a description of the property right as a whole is provided but only the non-corporeal part owed by the debtor is sold. The property may be sold in its entirety with the consent of the other joint owners expressed in writing.

In the event of the sale of property which the debtor has mortgaged or pledged to secure the debt of another party or acquired encumbered by a mortgage or pledge, the receiver sends a notice to the secured creditor notifying it of the time of the sale. A separate distribution account is drawn up in which the sums to be paid to the secured creditor from the sale of such property are indicated. The receiver reserves the sum payable to the secured creditor under that distribution account and handed over upon presentation of a writ of execution in respect of the debt or a certificate that the claim has been admitted to the insolvency proceedings. The receiver reserves the amount payable to a secured creditor holding a claim in respect of a debt secured by a lien upon presentation of a certificate from the register attesting to entry of a lien and a notarised statement signed by the creditor and attesting to the current amount of the secured loan.

Acting on a proposal from the receiver and in line with the resolution adopted by the meeting of creditors, the insolvency court authorises the sale of the debtor's assets through direct negotiation or through an intermediary, when the personal property and property rights, having been put on sale in their entirety, as separate parts or individual items and rights, failed to be sold because of a lack of buyers or the withdrawal of a buyer. The sale price may not be lower than 80 percent of the assessment. An offer for the acquisition of shares owed by the debtor in other companies must first be made to the other partners. If the offer is not accepted within a period of one month, the shares are sold. In this case the share acquisition price must be paid within a period that does not exceed 60 months from the date on which a buyer is selected and a contract is concluded after the price has been paid in full.

If housing units owned by the debtor are rented out to workers and employees of the debtor as at the date of the resolution of the meeting of creditors on the rules and procedure for their conversion into cash, the receiver must first offer the housing units for sale to the workers and employees or to other persons holding claims arising from employment relations with the debtor, except in the case of pending lawsuits in respect of the properties in question. The receiver sends a written invitation to each person, containing a description of the property, its valuation, the time period for payment, which may not be shorter than 30 days and longer than 60 days, and the bank account to which the money must be remitted. The parties must respond to the notice within a period of 14 days and notify the receiver whether they wish to purchase the property at a price equal to that stated in the valuation within the time period specified. Upon payment of the price, workers and employees may set off their claims in respect of unpaid salaries owed to them by the debtor. The sale contract is drawn up in the form of a title deed signed by the receiver in the capacity as vendor. The expenses relating to the sale are borne by the vendor.

The receiver demands that a pledged item of personal property held by a creditor or a third party be handed over and sells it in accordance with the procedure laid down in Chapter Forty-six of the Commerce Act, unless the law allows the sale to be arranged by the creditor without judicial intervention.

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?

The following claims may be lodged in insolvency proceedings:

- claims in respect of debts secured by a pledge or mortgage, or claims in respect of debts that have been attached or garnished, registered in accordance with the Liens Act;

- claims in respect of which the right of lien is exercised;
- expenses incurred in the insolvency proceedings (stamp duty payable upon filing and all other expenses incurred until the entry into force of the ruling opening insolvency proceedings; the receiver's remuneration; the claims of workers and employees when the debtor's enterprise has not ceased trading; the costs incurred on augmentation, administration, valuation and distribution of the insolvency estate; and the maintenance payments in favour of the debtor and their family);
- claims arising from employment contracts that existed before insolvency proceedings were opened;
- statutory compensation payable to third parties by the debtor;
- public-law debts to the central government or municipalities, including but not limited to those arising from taxes, customs duties, fees and mandatory social security contributions, if they arose before the date on which insolvency proceedings were opened;
- claims that arose after the commencement of insolvency and unpaid by the respective due date;
- any remaining unsecured claims that arose before insolvency proceedings were opened;
- statutory or contractual interest on unsecured debts due after the date on which insolvency proceedings were opened;
- loans granted to the debtor by a business partner or shareholder;
- donations;
- the expenses incurred by the creditors in connection with the insolvency proceedings, except for the expenses under Article 629b of the Commerce Act (prepaid initial litigation expenses).

Creditors with claims that arose after the date of the ruling opening insolvency proceedings receive payment on the respective due date and, if no payment is received, their claims are satisfied in accordance with the procedure laid down in Article 722(1) of the Commerce Act.

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

Creditors must lodge their claims with the insolvency court in writing within one month from the entry of the ruling opening insolvency proceedings in the Commercial Register, indicating the grounds for and amount of the claim, privileges and securities and an address for service, and providing written evidence.

Not later than 7 days after the one-month period has elapsed, the receiver draws up:
- a list of the claims lodged, arranged in the order of their receipt, indicating the grounds for and amount of the claim, privileges and securities and the date of lodgment;
- a list of the claims subject to entry into the list by the receiver on an ex officio basis, notably: the claims of workers or employees arising from their employment relations with the debtor and public debts assessed and set out in a decision that has come into effect;
- a list of the unadmitted claims lodged.

The claims lodged after the one-month period from the entry of the ruling into the Commercial Register has elapsed, but not later than two months after the date on which it elapsed, are added to the list of lodged claims and admitted in accordance with the procedure laid down by law. After the second period has elapsed no claims in respect of debts that arose up to the commencement of insolvency proceedings may be lodged.

Upon the reopening of stayed insolvency proceedings the period for lodging claims commences from the entry of the ruling pursuant to Article 632(2) of the Commerce Act (ruling to resume stayed insolvency proceedings).

Claims in respect of debt not settled by the due date that arose after the commencement of insolvency proceedings and before the approval of a recovery plan are lodged in accordance with the same procedure and added to an additional list drawn up by the receiver.

The receiver makes arrangements for the lists to be published expeditiously in the Commercial Register and makes them available to the creditors and the debtor at the registry of the court.

The debtor, as well as any creditor, may lodge a written objection with the court, with a copy to the receiver, against an admitted or unadmitted claim within 7 days from the date of which the list is published in the Commercial Register. A claim verified by an effective judgment given after the ruling opening insolvency proceedings in which the receiver participated may not be contested.

If no objections against the lists are received, the court approves the list of the claims admitted and entered on an ex officio basis in closed session immediately after the seven-day period has elapsed. Where objections against the lists are lodged, the bench reviews them in an open court hearing, having summoned the receiver, the debtor, the creditor holding the admitted or unadmitted claim contested and the creditor who objected to the claim. Where possible, all objections are dealt with in a single hearing. Where an objection is found to have merit, the court approves the list, having made the necessary adjustment. Where this is not the case, the court dismisses the objections within 14 days from the date of the hearing. The court ruling on approval of the list is published in the Commercial Register and may not be appealed.

A creditor who has lodged a claim after the one-month period from the entry of the ruling in the Commercial Register, but not later than two months from the date on which that period elapsed, may not challenge the admitted or unadmitted claim or seek debt arrangement from the remainder of the insolvency estate, if estate property has been converted into money.

Subsequently lodged claims admitted in accordance with the procedure laid down by law are added to the court-approved list.

A creditor or debtor who lodged a dismissed objection against the list drawn up by the receiver and a creditor with a claim that was excluded from the list of admitted claims or a creditor and debtor in respect of a claim added to the list of admitted claims following an objection that the court sustained, may lodge a claim pursuant to Article 694 of the Commerce Act seeking the validation of the unadmitted claim or the invalidation of an admitted claim within 7 days from the date on which the court ruling on approval of the list of admitted claims is published in the Commercial Register. The entry into force of the ruling has determinative effect for the debtor, receiver and all creditors in the insolvency proceedings.

In insolvency proceedings an admitted claim is a claim included in the court-approved list of admitted claims, except for claims contested by a convalidation claim pursuant to Article 694 of the Commerce Act.

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

Under the Commerce Act, distribution is authorised when sufficient proceeds are available from estate conversion into money.

The receiver draws up a chart for the distribution of available money between the creditors, taking into account ranking priorities, privileges and securities. The distribution chart remains partial until all claims have been paid in full or the entire insolvency estate has been converted into money, except for unsellable personal property. The distribution chart is displayed prominently for 14 days on a dedicated notice board on the premises of the court that are open to the public. The distribution chart is published in the Commercial Register. Within the period specified above, the creditor committee and each creditor may lodge a written objection against the distribution chart with the court. The court approves the distribution chart, having made any necessary adjustments upon ascertainment, on its own motion or another motion objecting to the legality of the chart. The ruling on approval of the distribution chart and the objections lodged against it are published in the Commercial Register, thereby notifying it to the creditors and the debtor. The ruling approving the distribution chart may be contested by the receiver, the creditor committee or by a creditor, regardless of whether or not that creditor has lodged an objection against the ruling by which the court annulled or modified the distribution chart. The distributions under the court-approved chart are made by the receiver.

The following procedure for settling claims by way of making distributions from the estate converted into money, stipulated in Article 722 of the Commerce Act, is followed:
1. claims secured by a pledge or mortgage, garnishment or distraint, registered in accordance with the Liens Act — from the proceeds from security realisation;
2. claims in respect of which the right to lien is exercised — from the value of the asset subject to lien;
3. expenses incurred in the insolvency proceedings (stamp duty payable upon filing and all other expenses incurred until the entry into force of the ruling opening insolvency proceedings; the receiver's remuneration; the claims of workers and employees when the debtor's enterprise has not ceased trading; the costs incurred on augmentation, administration, valuation and distribution of the insolvency estate; and the maintenance payments in favour of the debtor and their family);
4. claims arising from employment contracts that existed before insolvency proceedings were opened;
5. statutory compensation payable to third parties by the debtor;
6. public-law debts to the central government or municipalities, including but not limited to those arising from taxes, customs duties, fees and mandatory social security contributions, if they arose before the date on which insolvency proceedings were opened;
7. claims that arose after the commencement of insolvency and unpaid by the respective due date;
8. any remaining unsecured claims that arose before insolvency proceedings were opened;
9. statutory or contractual interest on unsecured debts due after the date on which insolvency proceedings were opened;
10. loans granted to the debtor by a business partner or shareholder;
11. donations;
12. the expenses incurred by the creditors in connection with the insolvency proceedings, except for the expenses under Article 629b of the Commerce Act (prepaid initial litigation expenses).
Where insufficient funds are available to satisfy the claims referred to in subparagraphs 3 to 12 in full, proportional distributions are made to each class of creditors. Where the central government has lodged several claims of the same class and these have been admitted, the amounts are remitted in a single payment from the asset distribution account and, upon receipt, distributed by the National Revenue Agency in accordance with the Tax and Social Insurance Procedure Code. The National Revenue Agency notifies the distribution made to the insolvency court and the receiver without delay.
Claims arising from statutory or contractual interest on unsecured debts, which became due after the date of the ruling opening insolvency proceedings; claims in respect of debts arising from loans granted to the debtor by a business partner or shareholder; creditors holding claims arising from donations and from the expenses incurred by a creditor in the insolvency proceedings, except those envisaged in Article 629b of the Commerce Act (prepaid initial litigation expenses) may be satisfied solely after all other creditors' claims have been settled in full. A creditor who has lodged a claim after a distribution has been made is added to the list of creditors with claims to be settled from subsequent distributions without the right to have his claim settled by receiving a higher share of the converted estate in subsequent distributions as compensation for not receiving a share from earlier distributions.
Secured creditors retain their securities in the insolvency proceedings. Their claims are settled first, that privilege being solely applicable to the proceeds from the realisation of the security held. When the sale price of the personal property pledged or mortgaged is insufficient to cover the full amount of the debt, along with accrued interest, the creditor participates in the distribution as an unsecured creditor. When the sale price of an item of personal property pledged or mortgaged exceeds the secured debt, including accrued interest, the residual amount is added to the insolvency estate. This rule also applies to the settlement of claims of creditors with a right of lien.
A creditor whose claim has been partially settled in the main proceedings in which a trader has been declared insolvent by a foreign court participates in the distribution of property in the ancillary proceedings instituted before a Bulgarian court, if the trader owns significant assets in Bulgaria and the share, which the creditor would receive from property distribution in the ancillary proceedings exceeds that of the other creditors in the same proceedings. The assets remaining after property distribution in the ancillary proceedings are transferred to the assets in the main proceedings.
A claim subject to postponement is included in the initial distribution as a contested claim and a provision for its settlement is set aside in the distribution account. The claim is excluded from the final distribution if the condition for postponement is still valid. However, a claim subject to a peremptory condition is included in the distribution as settled as an unconditional claim.
Provisions for the amount of the claim contested by civil action are also set aside in the distribution account. Where only the security or privilege is contested, the claim is provisionally included in the distribution as an unsecured claim until dispute adjudication and a provision equal to the amount the creditor would receive for a secured claim is set aside in the distribution account. Provision must be made un the recovery plan or upon converted estate distribution for unadmitted claims contested by convalidation claims pursuant to Article 694 of the Commerce Act.
The receiver, acting on a court order, deposits with a bank the amounts set aside at the time of final distribution for uncollected or contested claims. The debtor may receive the remainder of the insolvency estate, if any, after full and final settlement of its debts.

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

The court orders that insolvency proceedings be closed in the following cases:
- if within one year from the entry of the ruling pursuant to Article 632(1) of the Commerce Act (the ruling to stay insolvency proceedings due to available property being insufficient to cover the expenses of the insolvency procedure and non-payment of the initial expenses incurred in the proceedings) no resumption of proceedings has been requested;
- depletion of the insolvency estate;
- settlement of all claims;
- approval of a recovery plan;
- conclusion of an agreement between the debtor and all creditors holding admitted claims, if the agreement satisfies applicable statutory requirements and no declaratory judgment action pursuant to Article 694 of the Commerce Act has been filed in respect of a non-existing admitted claim.
In the first three cases, in the ruling on the closure of proceedings the insolvency court orders that the trader be struck off, unless all creditors' claims have been settled and unrealised assets remain in the insolvency estate. The ruling is subject to appeal within 7 days from its entry into the Commercial Register.
Insolvency proceedings are not closed when the debtor's liabilities have been collateralised by third-party securities and enforcement proceedings against the securities are still under way or when the debtor is a party to a pending lawsuit.
Under national law restructuring with a view to rescuing the debtor's enterprise is an element of the main insolvency proceedings.
Corporate rehabilitation is an independent optional stage in the insolvency proceedings. The pursuit of rehabilitation requires a dedicated written application to the court in which a recovery plan is proposed by any of the following parties: the debtor, the receiver, the creditors holding at least one-third of secured claims, the creditors holding at least one-third of unsecured claims; the partners or shareholders who hold at least one-third of the shareholders' equity of the debtor's enterprise; an unlimited partner or twenty percent of the total number of workers and employees of the debtor's enterprise.

A recovery plan (or recovery plans) may be proposed from the time of presentation of the insolvency petition until one month has elapsed from the date of entry into the Commercial Register of the court ruling on approval of the list of admitted claims. The expenses incurred on a recovery plan proposed by the debtor or the receiver are covered from the insolvency estate and in all other cases they are covered by the party which has proposed the plan.
The content of the recovery plan must satisfy the requirements stipulated in Article 700(1) of the Commerce Act and address issues, such as the extent to which the claims included in the court-approved lists as at the date on which the plan was proposed will be satisfied; the manner and timeframe for settlement of each class of claims, the guarantees for payment of contested unadmitted claims in respect of which lawsuits are pending as at the date on which the plan is proposed; the conditions upon which partners in general or limited partnerships are totally or partially discharged of liability; the extent to which the claims held by each class of creditors would be satisfied as compared to the property they would receive under a distribution in accordance with the general procedure laid down by law; the guarantees provided to each class of creditors in connection with the implementation of the plan; the management, organisational, legal, financial, technical and other actions to be taken in order to implement the plan; and the impact of the plan on the workers and employees of the debtor's enterprise. The recovery plan may additionally set out proposed actions or transactions aiming to restore the viability of the enterprise, including a sale of the entire or part of the enterprise, the conditions for and manner in which a sale is to be effected, debt-to-equity swaps, novation of liabilities or other actions and transactions (the plan specifically excludes the option of selling the property of water and sewerage operators required for their primary operations until a new water and sewerage operator in the respective area has been designated), the appointment of a supervisory body with powers to exercise control over the activities of the debtor for the duration of the recovery plan or a shorter period, payment postponement or deferral, full or partial debt discharge, company restructuring or other actions and transactions.
If the plan satisfies the requirements laid down by law (Article 700(1) of the Commerce Act), the court issues a ruling admitting the plan to being considered by the meeting o creditors and orders that a notice setting out a date for the meeting be published in the Commercial Register. When necessary, a notice is sent to the party that proposed the plan, instructing it to remedy detected deficiencies. The ruling may be appealed within a period of 7 days.
Only creditors holding admitted or validated claims or creditors granted voting rights by the court may vote on the plan. The creditors vote separately in the individual classes laid down by law and may cast their vote without being present at the meeting through a notarised letter of authorisation bearing the creditor's signature. The plan is adopted by each class of creditors by a simple majority of claims in the relevant class. Objections against the adopted plan may be lodged with the insolvency court within 7 days from the date of the vote. Objections may also be lodged by creditors who have filed convalidation claims pursuant to Article 694 of the Commerce Act. The plan is rejected if more than half of the creditors holding admitted claims, regardless of the class of those claims, have voted against it. A notice in respect of the adoption of the plan is published in the Commercial Register.
The court approves the recovery plan if it satisfies the conditions set out in Article 705(1) of the Commerce Act, i.e. if all the requirements laid down by law for its adoption by the different classes of creditors have been met; it has been adopted by a majority of the creditors holding more than half of the admitted claims included in the court-approved lists; if the plan envisages partial payment, at least one class of the creditors that adopted the plan will receive partial payment; all creditors of the same class are treated equally, unless prejudiced creditors have waived their objections to the adoption of the plan in writing; the plan ensures that a dissenting creditor and a dissenting debtor will receive the same payment they would have received if assets were distributed in accordance with the general procedure laid down by law; no creditor will receive more than is due to them under their admitted claim; no income will be paid to partners or shareholders until the full and final settlement of the claims of the class of creditors whose interests are affected by the plan; no maintenance payments will be made in favour of sole traders, unlimited partners and their families in an amount that exceeds that set by the court until full and final settlement of the claims of the class of creditors whose interests are affected by the plan. If the creditors' meeting has adopted several plans and all plans satisfy the requirements laid down by law, the court approves the plan adopted by the creditors holding more than half of admitted claims.
The recovery plan may be admitted to the ancillary insolvency proceedings instituted by a Bulgarian court, if the trader owns significant assets in Bulgaria, with the consent of the receiver in the main proceedings in which the trader has been declared insolvent by a foreign court.
By the ruling on approval of the recovery plan the court orders the closure of proceedings and appoints the supervisory body proposed in the plan or elected by the creditor committee. The ruling on approval of the recovery plan and the ruling rejecting a plan developed with a view to rehabilitating the debtor's enterprise, which has been adopted by the creditors' meeting, are subject to appeal within 7 days from the date of entry into the Commercial Register.
The court-approved plan is mandatory for the debtor and all creditors with claims in respect of debts incurred prior to the date of the ruling opening insolvency proceedings. Each creditor may apply for a writ of enforcement in accordance with the procedure laid down in Article 405 of the Civil Procedure Code in order to seek enforcement of the converted claim, regardless of its amount.
If the debtor defaults on the implementation of the recovery plan, the creditors holding claims converted under the plan that represent at least 15 percent of the total amount of claims, or the supervisory body appointed by the court, may ask the court to resume insolvency proceedings without a requirement for proof of insolvency or overindebtedness. In this case, the conversion effect of the plan with regard to the creditors' rights and securities remains unaffected. No rehabilitation proceedings are conducted under the resumed insolvency proceedings.
If the sale of the whole or part of the undertaking is envisaged in the approved recovery plan, a sale agreement must be concluded within one month from the date on which the ruling approving the plan entered into force. If a sale agreement fails to be concluded within the period laid down in the approved recovery plan, each party may, within one month from the expiry of the one-month period for concluding a sale agreement, ask the insolvency court to declare the agreement concluded. If none of the parties requests that the agreement be declared concluded and a creditor has filed an application, the insolvency court resumes proceedings and declares the debtor insolvent.
In addition to the adoption of a recovery plan, the Commerce Act provides another possibility for an arrangement between the debtor and the creditors. The debtor may independently conclude a written debt settlement agreement with all creditors with admitted claims at any stage in the proceedings without being represented by the receiver. If the agreement satisfies the requirements laid down by law, the court grants a stay of proceedings, if declaratory judgment actions contesting the existence of admitted claims have been brought under Article 694(1) of the Commerce Act. The judgment is subject to appeal within 7 days from the date of entry into the Commercial Register.

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

The final meeting of creditors adopts a decision on the unsellable personal property included in the insolvency estate and may decide that personal property of negligible value or receivables that would be unreasonably difficult to collect be released to the debtor. The receiver, acting on a court order, deposits with a bank the amounts set aside at the time of final distribution for uncollected or contested claims.
Upon the closure of insolvency proceedings the general foreclosure is lifted and the precautionary measure is deleted ex officio from the effective date of the ruling on the closure of insolvency proceedings.
Any claims that were not lodged and rights that were not exercised in the insolvency proceedings are extinguished. The claims that could not be satisfied in the insolvency proceedings are extinguished, except where proceedings resume in accordance with Article 744(1) of the Commerce Act (if within one year from the date on which a stay of proceedings was granted amounts set aside for contested claims are released or assets the existence of which was unknown during the insolvency proceedings are discovered).

Where the debtor has concluded a debt settlement agreement with all creditors holding admitted claims and insolvency proceedings have been closed, the creditors may seek redress in accordance with the general rules laid down in civil law, save where the Commerce Act provides otherwise. Where the debtor defaults on the debt settlement agreement, the creditors holding at least 15 percent of the total claims may request that insolvency proceedings be resumed without a requirement for proof of insolvency or overindebtedness.

Upon closure of the insolvency proceedings following the approval of the recovery plan, a new statutory limitation period under Article 110 of the Obligations and Contracts Act commences for the liabilities incurred before the date of the ruling opening insolvency proceedings as from the effective date of the ruling on approval of the recovery plan, when the liabilities in question are subject to immediate settlement or from the date on which the liabilities become due and payable, if the recovery plan provides for their deferral. According to Article 110 of the Obligations and Contracts Act all claims are extinguished upon expiry of the five-year statutory limitation period, unless otherwise provided by law. Where an application for the resumption of insolvency proceedings has been lodged, the statutory limitation period for admitted claims is suspended for the length of the resumption procedure. A creditor may apply for a writ of enforcement in respect of their converted claim, regardless of its amount, on the basis of the recovery plan approved by the court.

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

Under national law insolvency procedure expenses include:

- the stamp duty payable in respect of the insolvency proceedings and all other expenses incurred until the effective date of the ruling opening insolvency proceedings;
- the receiver's remuneration;
- the claims of the workers and employees of the debtor's enterprise when it has not ceased trading;
- the expenses incurred on the augmentation, administration, valuation and distribution of the insolvency estate;
- the maintenance payment paid to the debtor and their family;

No stamp duty is payable in advance when an insolvency petition has been lodged by the debtor. The stamp duty is covered from the insolvency estate upon asset distribution. When the insolvency application is filed by a creditor, and when a co-creditor is constituted as a party to the proceedings, the stamp duty is collected from the creditor or the party constituted as co-creditor.

For the purpose of opening insolvency proceedings, when the available assets of the debtor are insufficient to cover the initial expenses of the insolvency procedure, or when a determination is made during the course of insolvency proceedings that the available assets of the debtor are insufficient to cover the expenses of the insolvency procedure, the court determines an amount to be prepaid within a period set by the court by the debtor or a creditor. The initial expenses of the insolvency procedure are assessed by the court, taking into account the current remuneration of the provisional receiver and the estimated expenses of the insolvency procedure. When the debtor is a partnership, the court rules on the prepayment of expenses, taking into account the property of the partners with unlimited liability.

Upon commencement of insolvency proceedings expenses are covered from the insolvency estate. For this purpose, the court may issue an order authorising the receiver to make the necessary disposals.

Where proceedings are at the stage of insolvency estate augmentation, the stamp duty is not payable in advance. No stamp duty is collected when circumstances relating to the insolvency are entered into the Commercial Register on the grounds of court rulings and orders and upon the entry and deletion of a garnishment or general foreclosure.

In proceedings instituted on a motion to set aside a transaction on the grounds of Articles 645, 646 and 647 of the Commerce Act and Article 135 of the Obligations and Contracts Act, stamp duty is not subject to prepayment, regardless of the level of court. If the motion is granted, the stamp duty is collected from the party that did not prevail in the lawsuit. If the motion is dismissed, the stamp duty is covered from the insolvency estate. If the motion to set aside a transaction has been filed by the receiver and dismissed, the insolvency procedure expenses incurred by third parties are covered from the insolvency estate.

No stamp duty is payable in advance in respect of a declaratory judgment action brought by a creditor or a debtor pursuant to Article 694 of the Commerce Act. If the action is dismissed, the expenses must be paid by the plaintiff.

A creditor's claim lodged after the statutory filing period has elapsed, but not later than two months after the date on which it elapsed, are added to the list of lodged claims and admitted in accordance with the procedure laid down by law. The additional expenses incurred on admission are paid by the creditor who filed the claim.

The expenses incurred on a recovery plan proposed by the debtor or the receiver are covered from the insolvency estate and in all other cases they are covered by the party which proposed the plan. Unless otherwise provided in the recovery plan, the court orders the debtor to pay the stamp duty and the expenses incurred.

The expenses incurred on the preservation of property subject to conversion into money until the buyer enters into possession are covered from the insolvency estate. The expenses incurred on the sale of housing stock owned by the debtor and rented to their workers and employees are borne by the vendor.

Upon distribution of the converted assets the claims arising from expenses incurred in the insolvency proceedings are paid after the settlement of secured claims and claims in respect of which the right of retention is exercised.

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

The Commerce Act provides for safeguards that protect creditors of the insolvency estate against actions taken and transactions entered into by the debtor with a view to depleting the insolvency estate and harming creditors' interests. The law introduces the concept of a 'suspect period' — an irrefutable presumption that creditors' interests have been harmed, if certain actions have been taken or certain transactions have been entered into during this period. The length of the suspect period differs depending on the type of transaction to which the statutory presumption of harmfulness applies. For certain transactions and actions, the suspect period commences from the date of insolvency or overindebtedness, but not earlier than one year before the petition for opening insolvency proceedings was filed, and ends on the date of the ruling opening insolvency proceedings. In other cases, it extends to three years, two years or one year before the date on which the petition to open insolvency proceedings was filed and includes the period between the date on which the petition to open insolvency proceedings was filed and the date of the ruling opening insolvency proceedings. Certain actions taken and transactions entered into after the date of the ruling opening insolvency proceedings in breach of established procedure, i.e. without the prior consent of the receiver, are also considered harmful.

The types of actions and transactions presumed as harmful under the Commerce Act are exhaustively defined and fall into two categories: null and void and unenforceable in respect of the creditors of the insolvency estate.

Void transactions are governed by Article 646(1) of the Commerce Act. That Article stipulates that the following actions and transactions are void in respect to creditors, if taken/entered into after the date of the ruling opening insolvency proceedings in breach of the established rules of procedure:

1. the settlement of a debt incurred before the ruling opening insolvency proceedings;
2. a pledge or mortgage created on a right or an asset of personal property from the insolvency estate;
3. a transaction involving a right or an asset from the insolvency estate.

Other types of harmful actions and transactions that may be declared unenforceable are governed by the provisions of Articles 645(3), 646(2) and 647 of the Commerce Act and Article 135 of the Obligations and Contracts Act. In order to be unenforceable in respect of the creditors of the insolvency estate, the actions and transactions in question must be declared unenforceable by a judgment that has become final.
According to Article 646(2) of the Commerce Act the following actions taken or transactions entered into by the debtor after the commencement of insolvency or overindebtedness may be declared unenforceable in respect of creditors within the respective time periods:
1. the early settlement of a liability, regardless of the manner of settlement, within a period of one year before the petition to open insolvency proceedings was filed;
2. creating a mortgage or a pledge to secure a previously unsecured claim against the debtor within a period of one year before the petition to open insolvency proceedings was filed;
3. the settlement by the debtor of a liability that has become due and payable, regardless of the manner of settlement, within a period of six months before the petition to open insolvency proceedings was filed.
Where the creditor knew the debtor to be insolvent or overindebted, the length of the suspect period in the first two cases is extended to two years and in the third case — to one year. Knowledge is presumed when the debtor and the creditor are related parties or when the creditor knew or could have known of circumstances reasonably warranting the conclusion that the debtor is insolvent or overindebted.
Unenforceability may not be invoked in the first and the third case, if the liability is settled in the course of the debtor's ordinary business and when:
- it conforms to the terms agreed upon between the parties and is effected contemporaneously to the provision of goods or services of equivalent value to the debtor or within 30 days from the date on which the payable liability came due, or
- after the payment, the creditor provided goods or services of equivalent value to the debtor.
Unenforceability may not be invoked in the second case, when the pledge or mortgage was created:
- before or simultaneously with the grant of a loan to the debtor;
- to replace another security in rem, which may not be declared unenforceable pursuant to the rules laid down in Section I, Chapter 41 of the Commerce Act;
- to secure a loan granted for the purpose of acquiring the asset pledged or mortgaged.
The invalidity under Article 646(2) of the Commerce Act is without prejudice to the rights acquired in good faith by third parties before the entry of the application by which an action to set aside a transaction was brought. Bad faith is presumed until the contrary is proven, if the third party is related to the debtor or to the person with whom the debtor negotiated.
The public and private claims of the government subject to private enforcement, which the debtor has paid, may not be invalidated in respect of the creditors of the insolvency estate in accordance with the rules and procedure set out above.
According to Article 647(1) of the Commerce Act the following actions and transactions of the debtor, if performed within the time periods specified, may be invalidated in respect of the creditors of the insolvency estate:
1. transactions for no consideration, except for ordinary donations, concluded with a party related to the debtor within a period of three years before the date on which the application to open insolvency proceedings is filed;
2. transactions for no consideration concluded within a period of two years before the date on which the application to open insolvency proceedings was filed;
3. transactions at undervalue concluded within a period of two years before the application to open insolvency proceedings is filed, but not before the commencement of insolvency or overindebtedness.
4. mortgages, pledges or personal securities created in respect of third-party liabilities within a period of one year before the application to open insolvency proceedings is filed, but not before the commencement of insolvency or overindebtedness;
5. mortgages, pledges or personal securities created in respect of third-party liabilities in favour of a creditor related to the debtor within a period of two years before the application to open insolvency proceedings is filed, but not before the commencement of insolvency or overindebtedness;
6. transactions that are harmful to creditors concluded with a party related to the debtor within a period of two years before the application to open insolvency proceedings is filed.
Article 647(1) of the Company Act also applies to actions taken and transactions entered into by the debtor in the period between the application to open insolvency proceedings is files and the date of the ruling opening insolvency proceedings. The invalidation is without prejudice to the rights acquired in good faith by third parties for consideration before the entry of the application.
A set-off may also be invalidated in respect of the creditors of the insolvency estate, if a creditor acquired the claim and incurred the liability to the debtor before the date of the ruling opening insolvency proceedings, knowing at the time of acquiring the claim or incurring the liability that the debtor is insolvent or overindebted or that an application to open insolvency proceedings has been filed.
Regardless of the time when the mutual debts were incurred, a set-off effected by the debtor after the declaration of insolvency or overindebtedness, but not earlier than one year before the date of the application to open insolvency proceedings was filed, is invalid with respect to the creditors of the insolvency estate, except for the part of the debt which the creditor would receive at the time of distribution following asset conversion into money.
Article 135 of the Obligations and Contracts Act governs the actions which the receiver or creditor may bring seeking the invalidation of harmful actions of the debtor, if the harmful effect of those actions was known to the debtor. When the action is motivated by profit, the party with which the debtor negotiates is also presumed to have knowledge of the harm. The invalidity is without prejudice to the rights acquired in good faith by third parties for consideration before the entry of the application by which an action to set aside a transaction was brought. Knowledge is presumed until the contrary is proven, if the third party is the spouse, ascendant, descendant or sibling of the debtor. Where the action is performed before a claim has arisen, it is invalid solely if taken by the debtor or the party with which the debtor negotiated with the intent of harming the creditor.
An action seeking the voidance or invalidation of actions or transactions in respect of the creditors of the insolvency estate and the attending actions for performance in order to augment the insolvency estate may be brought by the receiver or, upon failure of the receiver to do so, by any creditor of the insolvency estate. When the claim is filed by a creditor, the court constitutes the receiver as co-plaintiff sua sponte. When a claim has been filed by creditor, a second filing in respect of the same claim will not be allowed. However, the second creditor may ask the court to constitute it as co-plaintiff before the first hearing in the case. Effective final judgment is valid and enforceable for the debtor, the receiver and all creditors.
Where the court has declared a transaction null and void in respect of the creditors of the insolvency estate, the assets provided by a third party are returned, and if such assets are not included in the insolvency estate or money is owed, the third party is constituted as creditor in the proceedings.
An action to set aside a transaction brought by the receiver in the main or ancillary insolvency proceedings in which a trader has been declared insolvent by a foreign court or in ancillary proceedings instituted by a Bulgarian court, if the trader owns significant assets in Bulgaria, is deemed to have been brought in both proceedings.

Last update: 01/05/2020

Insolvency/bankruptcy - Czechia

Legal framework

Insolvency proceedings in the Czech Republic are primarily regulated by Act No 182/2006 on insolvency and insolvency procedures (Zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení) (the Insolvency Act), supported by Act No 99/1963, the Code of Civil Procedure (Zákon č. 99/1963 Sb., občanský soudní řád).

Another important instrument is Act No 312/2006 on insolvency administrators (Zákon č. 312/2006 Sb., o insolvenčních správcích), which (in conjunction with the Insolvency Act) establishes a legal framework for the profession of insolvency practitioner.

The current version of these provisions can found here.

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be initiated against natural and legal persons, irrespective of whether they are business entities.

The individual types of insolvency proceedings (bankruptcy, reorganisation, debt relief) differ from each other in terms of the entities they are intended for. While a bankruptcy petition may be filed against all entities, reorganisation is aimed exclusively at businesses and debt relief primarily at non-business entities (as explained below).

Insolvency proceedings cannot be brought against the state, autonomous local authorities, political parties and movements during elections, and other selected entities of a predominantly public nature. Special rules apply in respect of financial institutions and insurance companies.

2 What are the conditions for opening insolvency proceedings?

Insolvency or impending insolvency

Insolvency proceedings are judicial proceedings that address a debtor's insolvency or impending insolvency and how to deal with it. The basic premise is therefore the existence of a state of insolvency or impending insolvency.

A debtor is insolvent if *(these are cumulative conditions)*:

the debtor has multiple creditors;

the debtor has pecuniary liabilities that are more than 30 days overdue;

is not able to perform those commitments.

Debtors are considered to be insolvent in particular if they have stopped paying off a substantial portion of their debts or fail to settle such liabilities for more than three months after they fall due, or if any of the due monetary claims against the debtor cannot be met by enforcement or distraint.

A debtor who is a business entity (whether as a legal or a natural person) is also insolvent if over-indebted. Debtors are over-indebted if they have multiple creditors and the sum of their liabilities exceeds the value of their assets.

Impending insolvency means a situation where, taking into account all of the circumstances, it can reasonably be assumed that debtors will be unable to meet a substantial part of their pecuniary liabilities in a due and timely manner.

Types of insolvency proceedings

Czech law distinguishes three basic ways of dealing with a debtor's insolvency or impending insolvency in insolvency proceedings:

bankruptcy (konkurs);

reorganisation (reorganizace);

debt relief (oddlužení).

The Insolvency Act does not dictate which of the different insolvency methods is to be used by a particular debtor, but leaves the choice open. Besides the liquidation procedure (bankruptcy), there is also an element of rehabilitation (reorganisation and debt relief). The choice of method appropriate to address a debtor's insolvency should be guided by concern for the best possible outcome for creditors.

Bankruptcy is a general way of dealing with insolvency where, on the basis of a bankruptcy order, creditors' established claims are largely met from the proceeds of asset realisation. Unmet claims or parts thereof are not extinguished unless the law provides otherwise. This insolvency method is always used when it is impossible to use reorganisation or debt relief as more moderate procedures against the debtor, or if it becomes clear in the course of proceedings that these methods cannot be continued.

Reorganisation may be used to deal with the insolvency or impending insolvency of debtors who are business entities. It involves reorganising the business. It is usually expected that creditors' claims will steadily be satisfied while the debtor's business remains in operation in accordance with measures to revitalise its management under a reorganisation plan approved by the insolvency court. Creditors monitor how the plan is progressing.

Debt relief is a way of dealing with insolvency or impending insolvency for debtors who are either natural persons (involved in business or not) or legal persons that are not business entities. This insolvency method is more sympathetic to social considerations than economic aspects. The aim is to give debtors a 'fresh start' and motivate them to participate actively in the redemption of their debt. Generally, debtors are required to have at least the capacity to cover in full the remuneration and cash expenses of the insolvency practitioner, at least the same amount to other creditors and, in addition, the full amount of any statutory maintenance claims and the fees of the person who drew up the application for debt relief. Certain categories of debtors (recipients of old-age or disability pensions, or those capable of satisfying creditors to a set percentage level) may be granted debt relief over a shorter period. It is assumed that secured creditors' claims will be satisfied from the collateral security. A parallel aim here is to reduce public budget spending on the rehabilitation of those who find themselves in social crisis. Debt relief can be accomplished by monetisation of the insolvency estate, or by repayment scheduling together with monetisation of the insolvency estate.

Who may bring insolvency proceedings?

Insolvency proceedings may only be initiated once a petition has been filed. They are opened on the date on which the insolvency petition reaches a court with due jurisdiction in the case. Insolvency petitions may be filed by debtors or creditors alike, except in cases of impending insolvency, when they may be filed only by the debtor.

Debtors who are business entities (whether a natural or a legal person) are required to file an insolvency petition without undue delay after they learn or, with proper care, should have learned of their insolvency.

Initiation of bankruptcy

An insolvency court issues a bankruptcy order as a separate ruling. In exceptional cases, this ruling may be combined with the insolvency decision (if the debtor is a person unable to draw on reorganisation or debt relief). A declaration of bankruptcy takes effect when the bankruptcy order is published in the insolvency register.

Initiation of reorganisation

Reorganisation is initiated by permission of the insolvency court, issued further to an application from the debtor or a registered creditor.

Permission for reorganisation may be granted if *(these are non-cumulative conditions)*:

the debtor's total annual net turnover in the last accounting period preceding the insolvency petition was at least CZK 50 000 000; or
the debtor has at least 50 employees; or
the debtor presents the insolvency court, together with the insolvency petition, or no later than the date the insolvency decision is handed down, with a reorganisation plan endorsed by at least half of all secured creditors (calculated according to the aggregate amount of the claims) and by at least half of all unsecured creditors (again calculated on the basis of the amount of the claims).
Reorganisation is inadmissible if the debtor is a legal person in liquidation, a securities dealer or an entity authorised to trade on a commodities exchange under specific legislation.
The insolvency court permits reorganisation if the corresponding legal conditions are met. There is no right of appeal.
The insolvency court rejects an application for permission to reorganise if: (a) taking into account all circumstances, it can reasonably be assumed that there is dishonest intent; (b) the application has been re-filed by a person who has already had a previous application for permission to reorganise heard by the court; or (c) the application has been filed by a creditor but has not been approved by the creditors' meeting. Appeals against such rulings may be lodged only by those who submitted the application.

Initiation of debt relief

An application for debt relief is filed by the debtor using a prescribed form and, where appropriate, is submitted together with an insolvency petition (if insolvency proceedings have not been initiated by a creditor). There are restrictions regarding when an application for debt relief can be filed on behalf of the debtor by a lawyer, a notary, a bailiff, an insolvency practitioner or a person accredited in the public interest. Debtors are entitled to file the application themselves if they have a university degree in law or economics.
A debt relief application and its annexes must contain, in particular, data on debtor's past and expected future income, a list of assets, and a sworn statement indicating that, when drawing up the insolvency petition, they were informed of their obligations in the insolvency proceedings, that in the discharge of debt they will properly pay creditors' claims, that they will make every effort that may reasonably be demanded of them to satisfy them in full, that they will comply with all obligations under the Insolvency Act and the decision approving the debt relief, and that they will declare all their income in full.
The insolvency court grants permission for debt relief if the conditions are met. It rejects a debt relief application if, taking into account all circumstances, it can reasonably be assumed that there is dishonest intent, or that the debtor is not able to make the minimum repayment. The minimum repayment must fully cover the remuneration and expenses of the insolvency practitioner, outstanding and ongoing maintenance, the remuneration of the person who draws up the application for debt relief, and a certain amount payable to ordinary unsecured creditors. The insolvency court also rejects a debt relief application if the results of the proceedings to date show that the debtor has been reckless or negligent in fulfilling obligations in insolvency proceedings. The court also rejects applications if the debtor (a) has been granted debt relief in the previous ten years, (b) has had debt relief terminated in the previous five years because of dishonest intent, or (c) has terminated proceedings in the previous three months by withdrawing the application. Applications are not rejected for the above reasons if the debtor entered into the obligation for justified reasons or if there is a significant imbalance between the amount of the debt and the service provided. Only the debtor has the right of appeal against the rejection of an application.

When does the initiation of insolvency proceedings have effect

The initiation of insolvency proceedings takes effect upon publication of a notice announcing the initiation of insolvency proceedings in the insolvency register (see below). The effects of initiation last until the end of the insolvency proceedings, unless the law provides otherwise for any of the insolvency methods.

Interim measures pending an insolvency decision

The insolvency court may order interim measures ex officio pending its decision on an insolvency petition, unless otherwise provided by law. Anyone seeking an interim measure that the insolvency court may otherwise order on its own motion is not obliged to lodge a security. The debtor, when applying for an interim measure, is not required to lodge a security.
By way of such interim measures, the insolvency court may inter alia:
appoint an interim trustee;
limit some of the effects associated with the initiation of insolvency proceedings;
order any of the insolvency petitioners to lodge a security covering compensation for damage or other loss incurred by the debtor.

Register of Insolvencies

Insolvency proceedings are publicised in the insolvency register managed by the Ministry of Justice (Ministerstvo spravedlnosti). This is an electronic public administration information system accessible at https://isir.justice.cz.
The insolvency register exists primarily so that there is maximum publicity for insolvency proceedings and so that their progress can be monitored. The register is used to publish insolvency court decisions issued in insolvency proceedings and in incidental disputes, case-file submissions, and other information, where so provided by the Insolvency Act or decided by the insolvency court.
The insolvency register is accessible to the public (except for certain details), and everyone has the right to peruse it, make copies, and take extracts from it. Besides serving as a source of information, the insolvency register is crucial for the service of documents – it is a vehicle for the delivery of most court rulings and other documents. Insolvency proceedings are generally notified in the insolvency register within two hours of submission of a petition (during the court's working hours). All court rulings and other documents are subsequently published in the insolvency register. This gives everyone an insight into insolvency proceedings conducted in the Czech Republic.

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?

Insolvency estate

If an insolvency petition is filed by the debtor, the insolvency estate comprises assets belonging to the debtor at the time the effects associated with the initiation of insolvency proceedings come into play, along with assets acquired by the debtor in the course of the insolvency proceedings.
If an insolvency petition is filed by a creditor, the insolvency estate comprises assets belonging to the debtor at the time the insolvency court's interim measure restricting (in whole or in part) the debtor's right of asset disposal takes effect, assets belonging to the debtor at the time the decisions on the debtor's insolvency take effect, and assets acquired in the course of insolvency proceedings by the debtor after those decisions have taken effect.
Where assets are co-owned by the debtor, the debtor's share of such property is included in the insolvency estate. These assets form part of the estate even if they are part of the debtor's joint marital assets.
Assets of persons other than the debtor form part of the estate if so provided by law, especially where they are consideration from ineffective legal acts. For purposes of asset realisation, this property is regarded as part of the debtor's assets.
Unless provided otherwise by law, the insolvency estate mainly consists of cash, movables and immovables, plant and equipment, passbooks, deposit certificates and other forms of deposits, shares, bills, cheques or other securities, shareholdings, the debtor's monetary and non-monetary claims, including

contingent claims and claims that are not yet due, the debtor's wages, salary, work bonuses and income in lieu of the debtor's work-related remuneration, other rights, and other assets with a value that can be expressed in monetary terms. The insolvency estate also includes items such as interest, gains, fruits and benefits pertaining to the above assets.

Unless otherwise provided by law, assets that are not attachable in enforcement or distraint proceedings are not part of the estate. This issue is governed by Act No 99/1963, the Code of Civil Procedure. Of the assets owned by debtors, enforcement cannot apply to those that debtors urgently need to satisfy their and their family's material needs or to perform their work tasks, as well as other items whose sale would be contra bonos mores (especially everyday garments, common household items, wedding rings and other similar objects, medical supplies and other items required by debtors due to illness or physical disability, cash in an amount equivalent to twice the subsistence rate for individuals, and animals kept as pets). However, items used for a debtor's business operations are not excluded from the estate. Unless otherwise provided by law, the estate does not include assets that, under specific legislation, may only be disposed of in a specifically intended manner (e.g. targeted grants and repayable assistance from central or local government budgets or a state fund).

Treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings

Broadly speaking, assets acquired by or devolving on the debtor after the opening of insolvency proceedings are included in the insolvency estate; depending on the insolvency method applied, this may be modified. Debtors may dispose of estate assets only if, in doing so, they abide by the constraints of that particular stage of the insolvency proceedings and the insolvency method.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Mission and status of the insolvency practitioner

The insolvency practitioner's main mission is to manage the debtor's insolvency estate and handle incidental and other disputes. The insolvency practitioner aims to achieve the proportional, swift, economical and highest possible satisfaction of creditors.

Insolvency practitioners are duty-bound to act conscientiously and with due diligence. They are required to make every effort that may reasonably be demanded of them to satisfy creditors to the fullest possible extent. They must prioritise the common interest of creditors over their own and others' interests.

In bankruptcy proceedings, the insolvency practitioner assumes authorisation to dispose of the estate, to exercise rights and to discharge obligations pertaining to the debtor in estate-related matters. In particular, the insolvency practitioner exercises shareholder rights attached to shares in the insolvency estate, acts in the capacity of employer in relation to the debtor's employees, and is responsible for the operation of the debtor's business, bookkeeping and tax compliance. Insolvency practitioners are as a rule tasked with monetising the estate.

In reorganisation proceedings, insolvency practitioners primarily supervise the activities of a debtor in possession, continue to identify the estate and draw up an inventory thereof, deal with incidental disputes, compile and add to the list of creditors, and report to the creditors' committee. Insolvency practitioners also act in the capacity of the debtor's general meeting or members' meeting.

In debt relief proceedings, insolvency practitioners work together with the insolvency court and creditors to oversee the debtor and the debtor's operations, realise the debtor's assets, and allocate monthly payments under the repayment schedule among the creditors.

Status of the debtor

In bankruptcy proceedings, debtors lose the authority to dispose of their estate, to exercise other rights and to discharge obligations relating to the estate. This authority passes to the insolvency practitioner. By law, legal acts executed by debtors in these matters after authority to dispose of the estate has passed to the insolvency practitioner are ineffective in relation to creditors.

In reorganisation proceedings, the debtor remains in possession of the estate, subject to restrictions. Legal acts of fundamental relevance to the disposal and management of the insolvency estate are executed by a debtor in possession only with the consent of the creditors' committee. A debtor who breaches this obligation is liable for damage or any other loss thereby caused to creditors or third parties; the members of the debtor's governing body are held liable for such damage or other loss jointly and severally. 'Legal acts of fundamental relevance' are taken to mean acts significantly changing the value of the estate, the creditors' standing, or the level of creditor satisfaction. Insolvency practitioners act in the capacity of the debtor's general meeting or members' meeting.

In debt relief proceedings, the debtor also remains in possession of the estate, subject to restrictions. The debtor is supervised by the insolvency court, the insolvency practitioner and creditors.

5 Under which conditions may set-offs be invoked?

In general terms, set-offs are governed by the Civil Code. As a rule of thumb, if parties have the same types of claims against one other, either may notify the other party that they are setting off their claim against the counterparty's. Set-offs can be invoked as soon as a party has the right both to demand that a claim be met and to pay its own debt. A set-off cancels out the two claims to the extent that they coincide with each other; if they do not cover each other completely, the claim is offset in a similar way as in the case of fulfilment. These effects are produced when two claims become eligible for set-off.

In insolvency proceedings, mutual claims of the debtor and the creditor may be set off following the insolvency decision if the statutory set-off conditions (under the Civil Code) have been met before the decision on the insolvency method is taken, unless otherwise provided by the Insolvency Act (e.g. extension of the time limit for claims arising from the renting of residential property).

Set-off in insolvency proceedings is not admissible, in particular, if the debtor's creditor:

has not become a registered creditor with respect to the creditable claim; or

has obtained a creditable claim as a result of an ineffective legal act; or

knew of the debtor's insolvency at the time the creditable claim was acquired; or

has yet to pay the debtor's due claim to the extent to which it exceeds the creditor's creditable claim; or

in cases stipulated by and interim measure of the insolvency court.

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

Mutual performance contracts

If the debtor, at the time bankruptcy is declared or reorganisation or debt relief is permitted, is party to a mutual performance contract, including a pre-contract, that has yet to be fully implemented by either the debtor or the counterparty at the time bankruptcy is declared or reorganisation or debt relief is permitted, the following applies:

- in bankruptcy or debt relief proceedings, insolvency practitioners may perform a contract instead of the debtor and seek fulfilment by the other party to the contract, or may refuse performance;
- in reorganisation proceedings, a debtor in possession exercises the same authority, subject to the consent of the creditors' committee.

In bankruptcy or debt relief proceedings, an insolvency practitioner who does not state that a contract will be implemented within 30 days of the bankruptcy order or the debt relief permission is regarded as having refused performance; until then, the counterparty cannot withdraw from the contract, unless contractual provisions permit otherwise. In reorganisation proceedings, debtors in possession who do not state that they refuse performance within 30 days of the approval of reorganisation must implement a mutual performance contract.

A counterparty who is required to provide performance first may withhold such performance until such time as mutual performance is provided or secured, except where the contract is concluded by the counterparty after the publication of the insolvency decision.

If the insolvency practitioner or the debtor in possession refuses performance, the counterparty may claim compensation for resulting damage by registering a claim within 30 days of the refusal of performance. The counterparty's claims deriving from the continuation of the contract after the declaration of bankruptcy are claims against the insolvency estate.

The counterparty cannot seek the reimbursement of partial performance provided prior to the insolvency decision because performance was not reciprocated by the debtor.

Fixed contracts

If it is agreed that a deliverable with a market price is to be delivered at a precise time or within a fixed time limit, and if the time of performance occurs or the time limit expires only after a declaration of bankruptcy, the fulfilment of the commitment cannot be required; only compensation for damage caused by the debtor's non-fulfilment of the commitment may be sought. 'Damage' means the difference between the agreed price and the market price paid as at the effective date of the bankruptcy declaration in the place designated by the contract as the place of performance. The counterparty may claim damages as a creditor by registering a claim within 30 days of the declaration of bankruptcy.

Loan agreement

If the debtor has entered into a loan agreement, after bankruptcy has been declared the insolvency practitioner may demand the return of the loan before the contractual loan period expires.

Lease, sublease

There are detailed provisions on lease and sublease contracts. Among other things, after the bankruptcy declaration the insolvency practitioner is entitled to terminate lease or sublease contracts concluded by the debtor within a period prescribed by law or the contract, even if concluded for a fixed period; the notice period may not be longer than three months. This is without prejudice to the Civil Code's provisions concerning when and under what conditions the lessor may terminate the lease.

Debtor's draft contracts yet to be accepted by the counterparty when bankruptcy is declared

When bankruptcy is declared, applications by the debtor to conclude contracts that have yet to be accepted and any draft contracts that have been accepted by the debtor but have yet to be concluded are extinguished, where they involve the insolvent estate. Draft contracts not yet accepted by the debtor when bankruptcy is declared may only be accepted by the insolvency practitioner.

Reservation of title

If the debtor has sold an item with reservation 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 reservation 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.

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

The opening of insolvency proceedings has the following effects:

claims and other rights related to the estate cannot be invoked by bringing an action if they can be invoked by registration;

the right to satisfaction from collateral related to assets owned by the debtor or assets belonging to the insolvent estate may be exercised and newly acquired only under the conditions set out in the Insolvency Act. This also applies to the establishment of a judicial or distraint lien on real estate proposed after the initiation of insolvency proceedings;

enforcement or distraint affecting assets owned by the debtor, as well as other assets belonging to the estate, may be ordered or initiated, but cannot be implemented. For claims against the estate and claims of equivalent status, however, enforcement or distraint affecting assets belonging to the debtor's estate may be implemented on the basis of an insolvency court ruling, subject to the restrictions established by that ruling;

it is not possible to exercise a right, established by agreement of the creditor and the debtor, to garnishment in respect of wages or other income treated as wages or income in the enforcement of a ruling.

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

Insolvency decisions create a moratorium on judicial and arbitration proceedings concerning claims and other rights relating to the estate that are to be invoked by registration in insolvency proceedings, or that are viewed as registered in insolvency proceedings, or concerning claims not met in insolvency proceedings. Unless otherwise provided, it is impossible to continue these proceedings while an insolvency decision remains in effect.

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

Principles associated with the participation of creditors

Insolvency proceedings are based, inter alia, on the following principles affecting the participation of creditors:

insolvency proceedings must be conducted in such a way that none of the parties is unfairly injured or unlawfully advantaged, and that the swift, economical and highest possible satisfaction of creditors is achieved;

creditors who, by law, essentially have the same or similar status have equal opportunities in insolvency proceedings;

unless otherwise provided by law, a creditor's rights acquired in good faith prior to the initiation of insolvency proceedings cannot be restricted by a ruling of the insolvency court or as a result of the procedure followed by the insolvency practitioner;

creditors are obliged to refrain from acts aimed at satisfying their claims outside of insolvency proceedings, unless permitted by law.

Creditor bodies

Creditor bodies are:

the creditors' meeting;

the creditors' committee (or the creditors' representative).

The creditors' meeting is responsible for electing and removing members and alternate members of the creditors' committee (or a creditors' representative). The creditors' meeting may reserve for its competence anything falling within the remit of creditor bodies. If no creditors' committee or creditors' representative is appointed, the creditors' meeting acts in that capacity instead, unless otherwise provided by law.

If more than 50 creditors are registered, the creditors' meeting must set up a creditors' committee. If it is not obliged to do this, a creditors' representative may take the place of the committee.

The creditors' committee exercises the powers of creditor bodies, except in matters that are within the remit of the creditors' meeting or have been reserved by the creditors' meeting for its own competence. In particular, the creditors' committee supervises the insolvency practitioner's activities and is entitled to submit proposals to the insolvency court regarding the insolvency proceedings. The creditors' committee protects the common interest of creditors and, in cooperation with the insolvency practitioner, helps to achieve the purpose of the insolvency proceedings. The provisions on creditors' committees apply mutatis mutandis to creditors' representatives.

Category of creditors

The law makes a distinction between secured and unsecured creditors.

A secured creditor is a creditor whose claim is secured by assets belonging to the estate in the form of a lien, right of retention, conveyancing restriction, fiduciary transfer of a right, assignment of a claim to the collateral, or similar right under foreign law.
Secured creditors are in a position to wield significant influence over the course of the insolvency proceedings. Where the debtor is a business entity that may be reorganised under the Insolvency Act, the adoption of a resolution on the insolvency method (bankruptcy or reorganisation) requires the votes of at least half of all those secured (and, likewise, unsecured) creditors present at the creditors' meeting, measured by the amounts of their claims, unless at least 90% of the creditors present, calculated according to the amount of their claims, vote for the resolution. A secured creditor may also instruct a person in possession on how to manage the security binding that person, provided that such instructions are geared towards good governance. The insolvency practitioner is also bound instructions from secured creditors aimed at the monetisation of the security. Insolvency practitioners may reject such instructions if they believe that the subject of the security can be monetised more favourably, in which case they petition the insolvency court to review the instructions as part of its supervisory activity. The monetisation of an item, right, claim or other asset in insolvency proceedings extinguishes the security of the secured creditor's claim, even if that creditor did not register the claim.
Secured creditors' claims are in principle satisfied from the full amount of the proceeds from monetisation, less the insolvency practitioner's fee and the costs of management and monetisation, at any time during the proceedings, taking account of the time of inception of the security. Any portion of secured creditors' claims in bankruptcy that is left unsatisfied does not expire, but is satisfied on a pro rata basis alongside the claims of unsecured creditors.
All other creditors are unsecured. Their status in the insolvency proceedings is weaker and the projected level at which their claims will be met, according to statistical data, is usually much lower.

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

Insolvency practitioners may use estate assets in bankruptcy proceedings. The insolvency practitioner assumes authorisation to dispose of the estate, to exercise rights and to discharge obligations pertaining to the debtor in estate-related matters. In particular, the insolvency practitioner exercises shareholder rights attached to shares in the insolvency estate, takes decisions on trade secrets and other areas of confidentiality, acts in the capacity of employer in relation to the debtor's employees, and is responsible for the operation of the debtor's business, bookkeeping and tax compliance. Insolvency practitioners are as a rule tasked with monetising the estate.
In reorganisation and debt relief proceedings, the debtor continues to hold these rights, subject to significant restrictions.

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?

Claims against the estate and equivalent claims may be paid in full at any time after the insolvency decision has been taken.
A distinction is made between the following:
claims against the estate arising after the opening of insolvency proceedings or after the declaration of a moratorium (in particular the reimbursement of cash expenses and the fee of the interim trustee, the debtor's liquidator and members of the creditors' committee, and creditors' claims deriving from credit financing);
claims against the estate arising after the insolvency decision (in particular the cash expenses and fee of the insolvency practitioner, taxes, charges, social security contributions, state employment policy contributions and public health insurance contributions);
claims equivalent to claims against the estate (in particular the labour-law claims of the debtor's employees, and creditors' claims to statutory maintenance).

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

Lodging of claims

Creditors lodge their claims with the insolvency court using a prescribed form, and may do so from the opening of insolvency proceedings until expiry of the time limit set in the insolvency decision, which is identical for all types of proceedings: two months. Claims lodged after the deadline are disregarded by the insolvency court, and not settled in insolvency proceedings. Claims that have already been raised with the court, and enforceable claims, including those that are being recovered by enforcement or distraint, are also lodged. A creditor who lodges claims or who is regarded as a registered creditor may withdraw the claim at any time during the insolvency proceedings.
An application to lodge a claim must explain how the claim arose and what the amount is. A claim must always be quantified in monetary terms, even if it is a non-monetary asset. Any documents to which the claim application refers need to be attached to the application. The enforceability of a claim must be demonstrated by an authentic instrument.
For the purposes of the limitation period or the time limit until the extinction of rights, an application to lodge a claim has the same effects as an action or other invocation of a right before a court; this period starts on the date on which the application is submitted to the insolvency court.
The creditor is responsible for the accuracy of information contained in an application to lodge a claim. The insolvency court, acting on a recommendation from the insolvency practitioner, may impose penalties if the real amount of a claim is overstated (by more than 100%), by ordering payment of an amount to the estate that is determined with regard to all of the circumstances relating to the lodging of the claim and a review of the claim itself, up to the amount by which the sum for which the claim was lodged exceeded the actual value ascertained.
A creditor's right to have a claim met from the security is disregarded if it is lodged in a different order from that in which it should have been, or if, when reviewed, it is found that the level at which it was secured has been overstated by more than 100%. In this case, the creditor may be penalised by the insolvency court by being ordered to pay a (monetary) amount in favour of secured creditors who lodged claims with security pertaining to the same assets. The amount of that payment is set by the insolvency court with regard to all of the circumstances in which the right to have the claim met from security was exercised and reviewed, up to the amount by which the value of the security indicated in the application exceeded the security value ascertained .

Verification of registered claims

Claims lodged are first reviewed by the insolvency practitioner, who mainly cross-checks them against the accompanying documents and the debtor's accounts or records kept in accordance with specific legislation. The insolvency practitioner then invites the debtor to comment on the claims. Where appropriate, the insolvency practitioner conducts the necessary investigation into the claims, in cooperation with the authorities, which are obliged to provide such cooperation.
If a claim lodged is defective or incomplete, the insolvency practitioner invites the creditor to correct or complete it within 15 days (a longer time-limit may be set), and advises on how to do so. Claims that are not supplemented or corrected in a due and timely manner are submitted by the insolvency practitioner to the insolvency court for a decision determining that the application is to be disregarded. The creditor must be informed accordingly.
The insolvency practitioner draws up a list of the claims lodged. Secured creditors are listed separately. If claims are denied by the insolvency practitioner, this must be explicitly stated. For all creditors, the information necessary to identify them and to assess how the claim arose and the amount and ranking thereof must be indicated. In addition, for secured creditors the reason for and method of security must be stated.
The list of claims lodged is published by the insolvency court in the insolvency register prior to the verification hearing. The insolvency court also immediately publishes any change to the list of claims lodged in the insolvency register.

The claims lodged are then verified at a verification hearing ordered by the insolvency court. The date and place of the hearing are set by the insolvency court in its insolvency decision. Creditors have until the end of the verification hearing to change the amount of the claim they are lodging, unless it is secured. However, they cannot change the reason why the registered claim occurred or its ranking.

Denial of claims

The authenticity, amount and ranking of all claims lodged may be denied by: (a) the insolvency practitioner; (b) the debtor; or (c) a registered creditor.

The denial of a creditor's claim by another registered creditor must have the same particulars as an action under the Code of Civil Procedure, and must make it clear whether the authenticity, amount or ranking of the claim is being denied. A denial is served on a prescribed form.

The Insolvency Act recognises the following types of denial:

denial of the authenticity of a claim – it is argued that the claim never arose or that it has been completely extinguished or completely time-barred;

denial of the amount of the claim – it is argued that the debtor's liability is less than the amount registered (the person denying the claim amount must also state the actual amount of the claim);

denial of the ranking of the claim – it is argued that the claim has a less favourable ranking than that indicated in the claim lodged, or the right to have the claim met from the security is denied (the person denying the ranking of the claim must also specify the ranking in which the claim should be met).

If a registered creditor denies the claim of another registered creditor, these creditors become parties to an ancillary dispute. Insolvency practitioners who wish to assist a party to an ancillary dispute in which they are not participating have the right to intervene.

Decisions on the authenticity, amount and ranking of denied claims are taken by the insolvency court.

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

The insolvency estate is monetised in bankruptcy proceedings. This means that all assets pertaining to the estate are converted into cash for the proportional satisfaction of creditors. The estate is monetised by the insolvency practitioner. This step may be taken only after the bankruptcy order becomes final and the first creditors' meeting has been held. Assets at imminent risk of perishing or spoilage are exempt; exemption on other grounds may also be permitted by the insolvency court. The monetisation of the estate extinguishes all effects of an enforcement or distraint order and other defects tied to the realisation of assets, unless otherwise provided by law.

The insolvency estate may be monetised by:

public auction;

the sale of movables and immovables under the enforcement provisions of the Code of Civil Procedure;

the sale of assets outside of an auction.

an auction held by the court bailiff.

If the proceeds from the monetisation of the estate are not enough to meet all of the claims, the insolvency practitioner's fee and cash expenses are settled first, followed by creditors' claims arising during the moratorium, creditors' claims from credit financing, then (pro-rata) costs associated with the maintenance and administration of the estate and the labour-law claims of the debtor's employees, then creditors' claims to maintenance, and finally claims to compensation for damage to health. Other claims are satisfied proportionally.

After the decision approving the final report becomes final, the insolvency practitioner submits a draft order on the distribution of the estate to the insolvency court, stating how much should be paid for each claim in the revised list of registered claims. On that basis, the insolvency court issues an order on the distribution of the estate, in which it determines the amounts to be paid to creditors. All creditors included in the distribution schedule are satisfied in proportion to the ascertained amount of their claim. Before the distribution, as yet unpaid claims which may be met at any time during the bankruptcy proceedings are met, specifically:

claims against the estate – the cash expenses and fee of the insolvency practitioner, costs associated with the maintenance and administration of the debtor's estate, taxes, charges, social security contributions, the state employment policy contribution, public health insurance contributions, etc.;

equivalent claims – the labour-law claims of the debtor's employees, creditors' claims to compensation for damage to health, government claims, etc.;

secured claims.

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

Closure of bankruptcy

Once the estate has been monetised, the insolvency practitioner submits a final report to the insolvency court. The final report must describe the overall characteristics of the insolvency practitioner's activities, and include a quantification of the financial results thereof. It must quantify the amount to be distributed among the creditors and designate those creditors, indicating the amount of their shares in the total amount. Along with the final report, the insolvency practitioner submits a statement of the fee and expenses to the insolvency court.

The insolvency court reviews the insolvency practitioner's final report and invoice, and after a hearing with the insolvency practitioner corrects any errors and omissions therein. The insolvency court notifies the insolvency practitioner's revised final report to the parties by publishing it in the form of a public notice.

After the decision approving the final report becomes final, the insolvency practitioner submits a draft order on the distribution of the estate to the insolvency court, stating how much should be paid for each claim in the revised list of registered claims. The insolvency court then issues an order on the distribution of the estate, in which it determines the amounts to be paid to creditors. All creditors included in the distribution schedule are satisfied in proportion to the ascertained amount of their claim. In the distribution order, the insolvency court sets the insolvency practitioner a deadline for fulfilment, which must not be more than two months from the date on which the distribution order acquires legal force.

Bankruptcy proceedings end with the delivery of the insolvency practitioner's report on the fulfilment of the distribution order and the insolvency court's decision to close the proceedings. The court also decides to close the bankruptcy proceedings in certain other situations prescribed by law, e.g. if it is found that the debtor's assets are clearly inadequate to satisfy creditors. When the decision bringing the bankruptcy proceedings to an end becomes final, the insolvency proceedings are closed.

Closure of reorganisation

Reorganisation ends with the insolvency court's decision acknowledging the fulfilment of the reorganisation plan or substantial parts thereof. There is no right of appeal against that decision.

Reorganisation may also be terminated by an insolvency court decision to convert reorganisation into bankruptcy, which occurs in cases stipulated by law, in particular when problems arise in the approval of and compliance with the reorganisation plan. The insolvency court cannot take a decision to convert reorganisation into bankruptcy if the important aspects of the reorganisation plan have been carried out. Appeals against a court decision to convert reorganisation into bankruptcy may be lodged by the debtor, the reorganisation applicant, the insolvency practitioner or the creditors' committee. When the insolvency court decides to convert reorganisation into bankruptcy, the effects associated with a declaration of bankruptcy are established unless the insolvency court, in its decision, lays down different conditions for this conversion.

Closure of debt relief

Debt relief ends with the insolvency court's decision either acknowledging the implementation of debt relief or alternatively its non-implementation. An appeal may be lodged against that decision by the debtor, the insolvency practitioner or the creditors. If the insolvency court adopts a decision acknowledging the implementation of debt relief, and the debtor complies with all obligations under the approved debt relief method in a due and timely manner, the insolvency court adds to that decision an order freeing the debtor from the payment of claims included in the debt relief procedure to the extent to which they have not yet been met. Such an order does not apply to claims arising after the insolvency decision.
Debt relief may also be terminated by a court cancelling debt relief that had been approved. It will then also decide either to handle the debtor's insolvency through bankruptcy proceedings or to stop the insolvency proceedings if the debtor is completely insolvent. Approved debt relief proceedings may be cancelled in cases stipulated by law, in particular when the debtor fails to comply with the debt relief conditions.

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

In bankruptcy proceedings concerning the assets of a natural person (at any time after the closure of bankruptcy proceedings) or a legal person (until its dissolution by deletion from a public register), after the proceedings have been closed a distraint or enforcement order may be made in relation to a claim that has been established and not been denied by the debtor, and not met in the course of the bankruptcy proceedings. When an enforcement application is submitted, only a validation sheet and a report on the validation of the claim in question in the bankruptcy proceedings need be submitted. This right becomes statute-barred ten years after the closure of bankruptcy proceedings, with the limitation period starting on the effective date of the order closing the proceedings.
In cases of reorganisation, after the reorganisation plan takes effect enforcement or distraint may be ordered and implemented against the debtor, in order to recover a claim stipulated in the reorganisation plan. However, if the claim has been denied, enforcement or distraint is only possible if the insolvency court's decision establishing the claim has become final; this decision must be attached to the application.
In cases of debt relief, at the end of debt relief and the release from payment of the remaining claims, it is no longer possible to seek satisfaction of creditors' remaining claims by enforcement or distraint. It is immaterial whether creditors have partially satisfied in the debt relief proceedings or indeed whether they even registered their claim in the insolvency proceedings.

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

Costs – particularly the insolvency practitioner's fee and cash expenses – should be covered from the estate, i.e. they should be borne by the debtor.
As the insolvency estate is not always large enough to cover the costs, the insolvency court may, before deciding on an insolvency petition, order the insolvency petitioner to pay an advance on the costs of the insolvency proceedings by a set deadline, where this is necessary to cover the costs of proceedings and the necessary resources cannot be secured by other means. This applies even if it is clear that the debtor has no assets. The law sets an upper limit for the amount of such advances. If there are multiple insolvency petitioners, they are required to pay an advance jointly and severally.
If the estate is unable to cover the costs, the remainder is covered by the advance on the costs of insolvency proceedings, i.e. borne by the petitioner.
If the advance does not cover the costs either, the bill is footed by the state, up to a maximum, however, of CZK 50 000 in remuneration for the insolvency practitioner and CZK 50 000 for the cash expenses of the insolvency practitioner.

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

Legal acts by the debtor to reduce the chances that creditors will be satisfied or to favour certain creditors over others are unenforceable. Any omission by the debtor in this respect is also treated as a legal act. There are three categories of such unenforceable acts: (a) legal acts without adequate consideration; (b) preferential legal acts resulting in a situation where one creditor, to the detriment of other creditors, receives greater satisfaction than they would otherwise have obtained in the bankruptcy proceedings; (c) legal acts where the debtor intentionally curtails the satisfaction of a creditor, if this intention was known to the counterparty or, in view of all of the circumstances, must have been known to it.
Unless otherwise provided for in the Insolvency Act, the unenforceability of the debtor's legal acts, including those described by the Insolvency Act as unenforceable and which the debtor executed after the effects associated with the opening of the insolvency proceedings became applicable, is established by an insolvency court ruling on an action brought by the insolvency practitioner protesting the debtor's legal acts (an action to set a transaction aside). The insolvency practitioner may bring an action to set a transaction aside within one year from the date on which the insolvency decision takes effect. If an action is not brought within that time limit, the title to have a transaction set aside lapses. The debtor's consideration from unenforceable legal acts forms part of the estate once the ruling upholding the action to set a transaction aside becomes final.
The unenforceability of a legal act does not prejudice its applicability. However, in insolvency proceedings, the debtor's consideration from unenforceable legal acts forms part of the estate. If the debtor's original consideration from an unenforceable legal act cannot be surrendered to the estate, equivalent compensation must be provided.
The insolvency court is not bound by the decision of another court or another authority finding, in the course of insolvency proceedings, that a legal act relating to the assets or liabilities of the debtor is null and void, or by such a finding arising in any other way. In the course of insolvency proceedings, only the insolvency court examines the voidness of such a legal act. If the final ruling subsequently finds that a legal act relating to the assets or liabilities of the debtor is null and void, the economic benefit gained in the form of the consideration must be surrendered back to the estate.
If a legal act relating to the assets or liabilities of the debtor is found to be null and void by a court ruling that became final before the opening of insolvency proceedings, the legal act addressed by the ruling is also treated as null and void in the insolvency proceedings.

Specific rules on certain categories of claims

Specific rules apply to the following categories of claims:

claims against the estate arising after the opening of insolvency proceedings or after the declaration of a moratorium;
claims against the estate arising after the insolvency decision;
claims equivalent to claims against the estate;
subordinate claims;
the claims of the debtor's shareholders or members arising from their participation in the company or cooperative;
claims that are entirely excluded from satisfaction in insolvency proceedings.

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Insolvency/bankruptcy - Germany

Introduction

The law governing insolvency and insolvency proceedings is regulated in Germany by the Insolvency Code (*Insolvenzordnung* – InsO), which entered into force on 1 January 1999. The Insolvency Code differs from other rules of procedure in that it contains not only procedural, but also substantive provisions. For example, the provisions determining the effects of opening insolvency proceedings are substantive provisions (Sections 80 to 147 InsO).
The primary objective pursued by the Insolvency Code is collective satisfaction of a debtor's creditors, either by realisation of the debtor's assets and distribution of the proceeds or by reaching an alternative arrangement set out in an insolvency plan, particularly with a view to maintaining the enterprise in being (Section 1, first sentence, InsO). 'Collective satisfaction' (*gemeinschaftliche Befriedigung*) means that the creditors will in principle receive satisfaction in proportion to their respective claims. In addition, insolvency proceedings are intended to give honest debtors the opportunity to free themselves of their remaining debts (Section 1, second sentence, InsO).
A defining principle of German insolvency proceedings, in addition to the principle of equal treatment of creditors, is that of creditor autonomy (*Gläubigerautonomie*). Extensive rights are available to creditors to shape the proceedings, especially with regard to the way in which the debtor's assets are realised. The creditors also decide on the concrete form of insolvency proceedings, since, in addition to the 'standard' procedure, the Code opens up the possibility for secured and ordinary creditors to exercise their autonomy by drawing up an insolvency plan that departs from the provisions of the Insolvency Code to settle the realisation of the insolvency estate, the distribution to the parties concerned, the course of the insolvency proceedings and the debtor's liability subsequent to the termination of the proceedings. The insolvency plan is particularly important in the case of the reorganisation of an enterprise, although it can also provide a framework for winding up the enterprise.
German law on insolvency proceedings is also characterised by the principle of unity. This means that the Act on Reorganisation and Winding-up (*Gesetz für Sanierung und Liquidation*) does not provide for any separate types of proceeding. Both winding-up and reorganisation can be conducted by the standard procedure or by the insolvency plan procedure.
For reorganisation of the enterprise, attention is also drawn to the Act on the Stabilisation and Restructuring Framework for Businesses (*Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen*, also known as the *Unternehmensstabilisierungs- und -restrukturierungsgesetz*, or StaRUG), which entered into force on 1 January 2021. The StaRUG provides a range of instruments designed to enable a business that has fallen into difficulty, but is not yet insolvent or over-indebted, to be reorganised on the basis of a restructuring plan accepted by the majority of the creditors, without having to go through insolvency proceedings in accordance with the InsO. Since 17 July 2022, it has also been possible, upon application, to conduct proceedings under the StaRUG publicly, i.e. information on the procedure, place and time of court appointments and judicial decisions is published on a restructuring portal in accordance with Sections 84 to 86 of the StaRUG. They therefore also meet the conditions for insolvency proceedings within the meaning of Article 1(1) of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings ('the EU Insolvency Regulation').

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be opened in respect of the assets owned by any legal or natural person, even if that person does not engage in a commercial or self-employed professional activity. (Natural persons who do not engage in such an activity are referred to as 'consumers'.) Insolvency proceedings may also be opened in respect of the assets of a partnership without legal personality (e.g. a general commercial company (*offene Handelsgesellschaft*) or limited partnership (*Kommanditgesellschaft*)) or for a separate fund, such as the estate of a deceased person. For legal persons governed by public law, the special provision in Section 12 InsO applies, which specifies that insolvency proceedings must not be opened in respect of the assets owned by the Federal Government or a *Land* (Section 12(1)(1) InsO).

2 What are the conditions for opening insolvency proceedings?

Insolvency proceedings are opened only on application, and not automatically by any public body. The application can be submitted by the debtor or by a creditor. In order to protect court and debtor against applications made prematurely or purely with intent to cause damage, a creditor making an application must plausibly demonstrate that grounds for insolvency exist and that the creditor does indeed hold a claim against the debtor.
When a limited company is insolvent, its governing bodies must make an application or face penalties. If that requirement is infringed, the creditors may be able to bring a claim for damages. Debtors in crisis who act culpably may make themselves liable to prosecution in certain circumstances (Sections 283 et seq. of the Criminal Code (*Strafgesetzbuch*)).
The reason for opening insolvency proceedings is generally inability to pay. A debtor is unable to pay if they are not in a position to meet payment obligations that have fallen due. Insolvency is, as a rule, presumed if the debtor has stopped payments (Section 17(2) InsO). If the debtor is a legal person or a company in which none of the partners is a natural person with unlimited liability, proceedings may also be opened on grounds of over-indebtedness. A debtor is over-indebted if their assets no longer cover the existing liabilities, unless it is in the circumstances highly likely that the enterprise will continue in being for the next 12 months (Section 19(2) InsO). If, considering the circumstances, the continued existence of the enterprise is highly likely, it must be taken as a basis when the value of the debtor's assets is assessed. An application can also be brought by a debtor who faces imminent inability to pay (Section 18(1) InsO). A debtor is deemed to face imminent inability to pay if they are likely to be unable to meet their existing obligations to pay on the date on which they fall due (Section 18(2) InsO). To assess whether a debtor faces imminent inability to pay, a forecasting horizon of 24 months is usually taken as the basis. For proceedings to be opened, it is also necessary to ensure the financing of insolvency proceedings. A request to open insolvency proceedings will therefore be refused if the debtor's assets will probably be insufficient to cover the costs of the proceedings (Section 26(1), first sentence, InsO).
If the conditions are met, the court in charge of the insolvency, or the 'insolvency court' (*Insolvenzgericht*), issues a decision to initiate proceedings, which is published. The public announcement is made by the court on the internet (http://www.insolvenzbekanntmachungen.de/). In the decision to initiate proceedings, the court calls on the ordinary creditors to file their claims with the insolvency administrator within a specific time limit. It sets a date for a meeting at which the creditors, on the basis of the insolvency administrator's report, decide on the course to be taken by insolvency proceedings, and set a date for a verification hearing at which the filed claims will be verified (Section 29(1) InsO).
As already stated in the introduction, the Insolvency Code does not provide for separate types of proceedings for reorganisation and winding-up. In addition to the 'standard' procedure, the Code opens up the possibility of an insolvency plan as a path to winding-up or reorganisation.
As it may take some time for the insolvency court to verify that the conditions for opening the proceedings are met, the court initially takes any interim measures which appear necessary to prevent any change to the financial status of the debtor that would be detrimental to the creditors pending the decision on the application (Section 21(1), first sentence, InsO). In practice, the court designates a provisional insolvency administrator (*vorläufiger Insolvenzverwalter*), who may be classified as either 'weak' or 'strong'. If a 'weak' provisional insolvency administrator is appointed, the debtor retains power of disposal and the individual duties of the administrator are determined by the court, although these may not go beyond the duties of a strong provisional insolvency administrator (Section 22(2), second sentence, InsO). The court may, for example, order that disposal by the debtor is valid only with the approval of the administrator. Unlike the appointment of a strong provisional insolvency administrator, the appointment of a weak provisional insolvency administrator does not result in the interruption of pending legal disputes (Federal Court of Justice, judgment of 21 June 1999 – II ZR 70/98 – paragraph 4). A provisional insolvency administrator is 'strong' if the court imposes a general prohibition preventing the debtor from making any disposal, so that the right to manage and dispose of the debtor's property is vested in the administrator (Section 22(1), first sentence, InsO).

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 (*Insolvenzmasse*) includes the assets owned by the debtor at the time when the proceedings are opened and those newly acquired by them during the proceedings (i.e. until the proceedings are terminated or discontinued). The estate does not include strictly personal rights of the debtor or objects not subject to attachment, since these would not be subject to individual enforcement proceedings either. Earned income, for example, is part of the insolvency estate only to the extent that it exceeds the debtor's minimum subsistence level. Assets released by the insolvency administrator also belong to the debtor's non-attachable assets.

In German law, the right to manage and dispose of the assets belonging to the insolvency estate is in principle transferred to the insolvency administrator on the opening of proceedings (exception: debtor-in-possession management (*Eigenverwaltung*), Sections 270 et seq. InsO), so the provision of collateral in favour of lenders who grant debtor-in-possession financing, for instance, is incumbent on the insolvency administrator. For transactions of particular importance, such as a loan contract placing considerable burdens on the insolvency estate, the insolvency administrator needs the approval of the creditors' meeting or of an appointed creditors' committee (Section 160 InsO). Loan commitments and other liabilities entered into by the insolvency administrator are obligations incumbent on the estate which are satisfied from the estate as a priority, i.e. before the ordinary creditors. In this way, it is ensured that, after the opening of insolvency proceedings, contracting partners are prepared to do business with the insolvent debtor.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Since, with the opening of insolvency proceedings, the insolvency administrator as a rule assumes an important role (exception: debtor-in-possession management), at this stage of the proceedings the insolvency court essentially has powers of supervision and direction (see Sections 58 and 76 InsO) (in addition to special powers, for example in the insolvency plan procedure or in the context of debtor-in-possession management). Once insolvency proceedings have been opened, the key decisions (realisation, winding-up, reorganisation and insolvency plan) are left to the creditors. The court has special powers and tasks, however, at the stage of opening the proceedings. Here it takes decisions on the opening, on interim measures of protection and on the appointment of an insolvency administrator. The court is also responsible for supervising the insolvency administrator. It supervises only the lawfulness of the insolvency administrator's acts, but not their advisability, and it cannot give instructions. In order to expedite insolvency proceedings, decisions of the insolvency court are open to appeal only in cases where the Code provides for an immediate appeal (*sofortige Beschwerde*) (see Section 6(1) InsO). An immediate appeal can be filed with the insolvency court itself or with the regional court (*Landgericht*) above the insolvency court, in writing or orally at the court office (*Geschäftstelle*). Immediate appeals do not have suspensory effect. The court hearing the appeal or the insolvency court may, however, order a temporary stay of execution.

The insolvency administrator is the key player in insolvency proceedings. Only natural persons, and not legal persons, may be appointed as insolvency administrators (Section 56(1), first sentence, InsO). Lawyers, accountants or tax advisers, in particular, are eligible for appointment. With the opening of insolvency proceedings, the right to manage and dispose of the debtor's property is vested in the insolvency administrator (Section 80(1) InsO). The insolvency administrator is required to clear the assets they find on the opening of insolvency proceedings of any items that are not the property of the debtor. They also have to transfer to the debtor's assets items which belong to the debtor's assets under liability law, but which were not yet entered among the debtor's assets at the time insolvency proceedings were opened. The debtor's assets determined in this way constitute the insolvency estate (*Insolvenzmasse*, Section 35 InsO) which will be realised by the insolvency administrator and from which the creditors will be satisfied. Further duties of the insolvency administrator include:

paying wages to the employees of the insolvency debtor;

deciding whether to continue or end pending legal disputes (Sections 85 et seq. InsO) and how to deal with contracts which have not been fully performed (Sections 103 et seq. InsO);

drawing up a statement of assets and liabilities (Section 153(1), first sentence, InsO);

contesting transactions entered into prior to the opening of insolvency proceedings that are likely to disadvantage the ordinary creditors (Sections 129 et seq. InsO).

The insolvency administrator is subject to the supervision of the insolvency court (Section 58(1) InsO). If a creditors' committee is set up, it supports and monitors the insolvency administrator in the performance of their duties (Section 69, first sentence, InsO).

After the opening of insolvency proceedings, when the right to dispose of the debtor's property has been vested in the insolvency administrator, the administrator may in principle dispose freely of the assets belonging to the insolvency estate. There are limits on transactions of particular importance, such as the sale of the enterprise or the entire stock. Transactions of particular importance such as these require the approval of the creditors' meeting or the creditors' committee. However, infringement of the approval requirement has no effect on outside parties, but results only in the liability of the administrator. The administrator also has to comply with a decision of the creditors' meeting to wind up the enterprise or to continue in business (Sections 157 and 159 InsO).

If the insolvency administrator wrongfully violates the obligations incumbent on them under the Insolvency Code, they are liable for damages to all parties to the proceedings (Section 60(1) InsO). Section 60(1) of the Code provides: 'The insolvency administrator shall be liable to compensate the damage suffered by any party to the proceedings if they wrongfully violate the duties incumbent on them under this Code. They shall conduct themselves with the care expected of a proper and diligent insolvency administrator.'

The insolvency administrator is entitled to remuneration in consideration of the exercise of their office and to reimbursement of appropriate expenses (Section 63(1), first sentence, InsO). The remuneration is regulated in the Insolvency Law Remuneration Regulation (*Insolvenzrechtsvergütungsverordnung* – InsVV) and is determined according to the value of the insolvency estate at the time the insolvency proceedings are closed. The Regulation provides for graduated standard rates, which may, however, be increased according to the scale and difficulty of the duties of the insolvency administrator.

Even after insolvency proceedings have been opened, the debtor against whom the claims of the ordinary creditors are made remains the owner of the assets to be realised (Sections 38 and 39 InsO). In principle, they are liable to the extent of all their assets. However, the right to manage and dispose of the assets within the scope of insolvency proceedings is vested in the insolvency administrator. At the request of the debtor, the court decision initiating the proceedings may also order debtor-in-possession management in accordance with Section 270 et seq. InsO. The debtor must attach to their request a debtor-in-possession management plan, the details of which are laid down in Section 270a InsO. The order is granted if the debtor-in-possession management plan is coherent and complete and no circumstances are known which suggest that the debtor-in-possession management plan is based in essential respects on incorrect facts (Sections 270b(1) and 270f(1) InsO). In addition, none of the grounds for termination of the provisional debtor-in-possession management arrangement set out in Section 270e may apply (Section 270b(1) InsO). In principle, the general provisions of insolvency law apply here too (Section 270(1), second sentence, InsO). However, in debtor-in-possession management, the debtor retains their right to manage and dispose of their assets, which they exercise under the supervision of a monitor (*Sachverwalter*) appointed by the court (Section 270(1), first sentence, InsO). In the case of debtor-in-possession management, the powers usually incumbent upon the insolvency administrator are shared between debtor and monitor.

The opening of insolvency proceedings gives rise to a large number of obligations on the debtor to provide information and to cooperate. At the same time, however, the debtor is also entitled to participate in the proceedings.

5 Under which conditions may set-offs be invoked?

Sections 94 et seq. InsO deal with the issue of whether an ordinary creditor may set off a claim on an insolvent debtor. The Code makes a fundamental distinction depending on whether the possibility of a set-off already existed at the time when the insolvency proceedings were opened or whether the possibility arose only afterwards. In the first case, the set-off is admissible in principle, which means that ordinary creditors do not have to register a claim for inclusion in the schedule of debts (*Tabelle*), but may obtain satisfaction by declaring the set-off to the insolvency administrator. However, the declaration of set-off is invalid if a creditor acquired the opportunity to set off a claim as a result of a voidable transaction (Section 96(1)(3) InsO).

In the second case, where the possibility of set-off arose afterwards, a distinction has to be made:

If at the time when the proceedings were opened the claim for set-off already existed, but was not yet due, did not yet provide for a similar consideration or was still conditional, the set-off is admissible after the opening of the proceedings as soon as the impediment to set-off is removed.

If, at the time when the proceedings were opened, the claim was not yet established or if the creditor acquired the claim against the debtor only after the proceedings were opened, set-off is prohibited under Section 96(1)(1) and (2) InsO, with the consequence that the debtor can require the creditor to perform their side of the contract for the benefit of the insolvency estate, but the creditor may register their claim only for inclusion in the schedule of debts, and will be satisfied only at the dividend rate.

If, on the other hand, the creditor did not acquire the claim from another creditor after the insolvency proceedings were opened, but acquired it in their own person after the opening of proceedings, for instance by concluding a contract with the insolvency administrator, they are entitled to set-off as a creditor of the insolvency estate.

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

The effects of insolvency proceedings on current contracts are regulated in German law in Sections 103 et seq. InsO. In principle, upon the opening of insolvency proceedings, existing contractual relationships may cease to exist or may continue, or the insolvency administrator is given the choice between performance and termination.

For some transactions, the effects of insolvency proceedings are explicitly regulated by law (Sections 103 to 118 InsO). Orders, contracts for work or services or authorisations to act in respect of assets forming part of the insolvency estate, for example, expire upon the opening of insolvency proceedings, whereas contracts concluded by debtors for the lease of property and employment contracts continue to exist and bind the insolvency estate.

For contracts not or not fully performed by the debtor and the other party, Section 103(1) InsO gives the insolvency administrator the choice between performance and non-performance of the contract. If the insolvency administrator decides in favour of performance for the account of the insolvency estate, the creditor's counterclaim is to be satisfied as a priority, because it represents a debt incumbent on the estate pursuant to Section 55(1)(2) InsO. If the insolvency administrator decides against performance, they may not demand anything further under the contract. Creditors may assert their claim for compensation for non-performance only as an ordinary creditor, by registering their claim for inclusion in the schedule of debts (Section 103(2), first sentence, InsO). If the insolvency administrator makes no choice, the contracting partner may require them to choose. In that case, the administrator has to declare without delay whether or not they intend to request performance. If they fail to do so, they may no longer insist on performance of the contract. For financial services and fixed-date transactions, the Code precludes the administrator's right of choice (Section 104 InsO).

If the fate of the contractual relationship is not specifically regulated in Sections 103 to 118 InsO, the contract continues even after the opening of insolvency proceedings.

The reliability of cancellation clauses in contracts is controversial. The starting point is the provision in Section 119 InsO, which states that agreements excluding or limiting the application of Sections 103 et seq. in advance are invalid. Under this provision, cancellation clauses independent of insolvency, which are not linked to the opening of insolvency proceedings or the lodging of applications, but for instance to the debtor's failure to pay, are permissible. However, cancellation clauses that do depend on insolvency are problematic – especially against the background of the Federal Court of Justice (*Bundesgerichtshof*) judgment of 15 November 2012 (IX ZR 169, 11, BGHZ 195, 348). In that judgment the court found that a cancellation clause in an energy supply contract that was dependent on the insolvency at issue was invalid. However, the court held that cancellation clauses dependent on an insolvency were not invalid per se: cancellation clauses corresponding to a possibility of cancellation provided for by law were permissible. Thus the assessment of cancellation clauses dependent on insolvency has not been conclusively settled. For contractual solution clauses in financial services and fixed-date transactions, Section 104(3) and (4) InsO contains special rules.

If a prohibition of assignment was effectively agreed between debtor and creditor in accordance with the rules of ordinary law, this is also binding on the insolvency administrator. In business transactions, however, such a prohibition of assignment is often ineffective, because even if there is a contractually agreed prohibition of assignment, the assignment of a monetary claim is nevertheless effective if debtor and creditor are traders (Section 354a(1) of the Commercial Code (*Handelsgesetzbuch*)).

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

Since insolvency proceedings aim for equal satisfaction of all creditors, Section 87 InsO makes it clear that ordinary creditors are permitted to enforce their claims only under the provisions governing the proceedings. The opening of insolvency proceedings therefore brings about an enforcement ban, preventing ordinary creditors from enforcing their claims against either the insolvency estate or the debtor's other property during the proceedings (Section 89(1) InsO). The enforcement ban is to be observed by operation of law, so enforcement already started is suspended automatically, regardless of whether the creditor was aware of the opening of the proceedings and whether the debtor has applied for a stay of execution.

Section 88 InsO provides that the opening of proceedings has retroactive effect (*Rückschlagsperre*) on prior enforcement measures, and specifies that security interests acquired by virtue of enforcement during the last month preceding the application to open insolvency proceedings or after such application was made become legally ineffective when the proceedings are opened. Here too it is irrelevant whether the creditor knew of the intended application to open the insolvency proceedings.

If the security was acquired by virtue of an enforcement measure sometime before the application to open insolvency proceedings, the security is not ineffective pursuant to Section 88(1) InsO, but may be contestable under certain conditions (Federal Court of Justice, judgment of 22 January 2004 – IX ZR 39/03).

On the opening of insolvency proceedings, the debtor loses their capacity to be a party to legal actions on behalf of the estate. This right is vested in the insolvency administrator, who is entitled to act as a party to legal proceedings by virtue of their office. The insolvency administrator may therefore assert claims belonging to the insolvency estate in their own name.

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

Since the insolvency debtor loses the capacity to take legal action on the opening of insolvency proceedings, a pending lawsuit, if it concerns the insolvency estate, will initially be interrupted (Section 240, first sentence, of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO)).

If the debtor is the plaintiff (for example, in a lawsuit in which the debtor is a claimant or in which they raise objections to an already enforceable claim), the insolvency administrator may resume the proceedings or refuse to do so (Section 85(1), first sentence, InsO). If they accept, the proceedings are continued. If they refuse, the asset is released from the insolvency estate, and the action may be resumed by either the debtor or the defendant (Section 85(2) InsO).
If the debtor is the defendant, a distinction must be made: if, at the time the insolvency proceedings are opened, a lawsuit is pending concerning a claim within the scope of the insolvency, the claim must be registered for inclusion in the schedule of debts (see Section 87 InsO). If the insolvency administrator or an ordinary creditor objects, the determination of the claim is to be pursued by resumption of the interrupted lawsuit (Section 180(2) InsO).
If, on the other hand, the claim is not within the scope of the insolvency, but for example is a claim for exemption or for a debt incumbent on the insolvency estate, the lawsuit may be resumed either by the insolvency administrator or by the plaintiff (Section 86 InsO).

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

As already explained in the introduction, the Insolvency Code grants considerable influence over insolvency proceedings to creditors. Creditors exercise their rights through the creditors' meeting (*Gläubigerversammlung*, Sections 74 et seq. InsO) or a creditors' committee (*Gläubigerausschuss*) that may optionally be set up by the creditors' meeting (Sections 68 et seq. InsO). Whereas the creditors' meeting is the central body through which creditors take their decisions, the creditors' committee is a body through which they exercise supervision. The creditors' meeting is convened by the insolvency court (Section 74 (1), first sentence, InsO), which also chairs it (Section 76(1) InsO). All preferred creditors, all ordinary creditors, the insolvency administrator, the members of the creditors' committee and the debtor are entitled to attend the creditors' meeting (Section 74(1), second sentence, InsO). Decisions of the creditors' meeting are always adopted by simple majority, with the majority being decided not by the number of votes, but by the sum of the claims held by the creditors voting (Section 76(2) InsO). If an enterprise exceeds certain size criteria, the insolvency court has to appoint a provisional creditors' committee even before the opening of the insolvency proceedings (Section 22a InsO). This committee is involved in the appointment of the insolvency administrator and plays a role in the decision on the ordering of debtor-in-possession management (Sections 56a and 270b(3) InsO).
The importance of the creditors' meeting is reflected in the fact that it decides the course to be taken by the proceedings, and especially the way in which the debtor's assets are to be realised. Further duties of the creditors' meeting are:
the election of a different insolvency administrator (Section 57, first sentence, InsO);
the supervision of the insolvency administrator (Sections 66, 79, 197(1)(1) InsO);
the decision to close down or continue the enterprise (Section 157 InsO);
the approval of certain transactions of particular importance entered into by the insolvency administrator (Section 160(1) InsO).

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

For the powers of the insolvency administrator with regard to assets of the insolvency estate, see above under the question 'What powers do the debtor and the insolvency practitioner have, respectively?'

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?

Creditors entitled to exemption

Creditors entitled to exemption (*aussonderungsberechtigte Gläubiger*, 'creditors with a right of separation') are those who are entitled to claim the exemption of an asset from the insolvency estate under a right *in rem* or *in personam* (Section 47, first sentence, InsO). Creditors entitled to exemption are not ordinary creditors and therefore do not have to register their claims for inclusion in the schedule of debts, but may enforce them by way of an action in accordance with the ordinary rules of law (Section 47, second sentence, InsO). However, they bring such an action not against the debtor, but against the insolvency administrator, who acts as a party by virtue of their office. Entitlement to exemption may derive from ownership of the asset (provided it is not ownership transferred by way of security, as this makes the owner a secured creditor only (Section 51(1) InsO)) or from simple reservation of title, but also from a claim to restitution under the law of obligations (e.g. a landlord against a tenant).

Secured creditors

Secured creditors (*absonderungsberechtigte Gläubiger*, 'creditors with a right to separate satisfaction') are those who have a right to priority satisfaction from the realisation of an asset belonging to the insolvency estate. They do not participate in the procedure for the verification of claims, but are given preferential treatment, since they are entitled to satisfaction from the proceeds of the asset in question before the other lower-ranking or unsecured ordinary creditors. Any surplus proceeds from the realisation accrue to the insolvency estate, and only those are available for the satisfaction of the other creditors. A right of security of this kind may derive inter alia from liens, pledges on movables or ownership by way of security (Sections 49, 50 and 51 InsO).
If the proceeds obtained are insufficient for satisfaction and the secured creditor has a claim *in personam* against the debtor in addition to the right *in rem*, they may demand, in addition to the secured claim, proportional satisfaction from the insolvency estate by registering their personal entitlement, in so far as it has not been satisfied, for inclusion in the schedule of debts (Section 52, second sentence, InsO).

Creditors with claims against the estate itself

Creditors with claims against the estate itself (*Massegläubiger*) do not have to register their claims, which are settled in advance. In accordance with Section 53 InsO, the debts incumbent on the estate include the costs of the insolvency proceedings and the other liabilities created by the administrator after the opening of the proceedings in connection with the handling of the insolvency (e.g. salary claims of the workers still employed in the enterprise or claims of a lawyer retained by the insolvency administrator to deal with pursuit of claims before the courts). The reason for the preferential satisfaction of these claims is that the insolvency administrator can conduct the procedure properly only if they may enter into new commitments for which full performance is ensured. In addition, liabilities from an unjust enrichment of the insolvency estate, as well as certain liabilities from provisional insolvency proceedings, are obligations incumbent on the estate.

Ordinary creditors

Only ordinary creditors (*Insolvenzgläubiger*, 'insolvency creditors') take part in the procedure for the verification of claims (Section 174(1), first sentence, InsO). In accordance with Section 38 InsO, ordinary creditors are all personal creditors holding well-founded claims against the debtor on the date when insolvency proceedings are opened. Claims of subordinated ordinary creditors (*nachrangige Insolvenzgläubiger*) listed in Section 39(1) InsO need be filed only if specifically requested by the insolvency court (Section 174(3), first sentence, InsO). Subordinated insolvency claims are settled after the other claims of the ordinary creditors. Examples include fines and the interest and penalties for late payment accruing on claims of ordinary creditors since the opening of insolvency proceedings.

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

Claims must be filed in writing with the insolvency administrator within the time limit set by the insolvency court in the opening decision, indicating the cause and the amount of the claim and accompanied by copies of the documents evidencing the claim (Section 174(1), first and second sentences, and (2) InsO). In the event of late filing, however, claims will still be considered (Section 177 InsO). All insolvency claims are to be filed, regardless of whether the underlying legal relationship is governed by civil law or by public law (such as, for example, tax liabilities).
The following particularities apply to foreign creditors: Article 55 of the EU Insolvency Regulation enables foreign creditors to lodge their claims using a standard claims form. Claims may be lodged in any official language of the EU institutions. Creditors may, however, be required to provide a translation in the

official language of the Member State of the opening of proceedings or in another language which that state has indicated it can accept. In principle, claims must be lodged within the period stipulated by the law of the state of the opening of proceedings. In the case of foreign creditors, that period is not less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the state of the opening of proceedings.
The insolvency administrator must enter all properly filed claims in a schedule of debts (*Tabelle*). The content of the claim is not verified at this point. Only at a verification hearing at the insolvency court are the claims verified and their amount and rank established (Section 176, first sentence, InsO). If no objection is raised to the claim at the verification hearing by either the insolvency administrator or an ordinary creditor, or if any objection raised is overcome, the claim is considered to have been admitted and the creditor will receive their dividend from the proceeds from the realisation of the insolvency estate. An objection on the part of the debtor does not affect the determination of the claim (Section 178(1), second sentence, InsO), but after the termination of insolvency proceedings ordinary creditors will not be able to enforce the remainder of their claim on the basis of registration in the schedule, and will have to bring a separate action against the debtor (Section 201(2), first sentence, InsO).
If, on the other hand, an objection is raised by the insolvency administrator or by another ordinary creditor at the verification hearing, the creditor may bring an action for admission against the contesting party (Section 179(1) InsO). The creditor may share in the proceeds, however, only if the action for admission establishes that their claim is indeed valid (Sections 180 et seq. InsO). Before any distribution of the proceeds, the insolvency administrator must draw up a distribution list (*Verteilungsverzeichnis*) (Section 188 InsO). Within a period of 2 weeks from the publication of the distribution list, evidence must be provided that an action for admission of the claim has been brought (Section 189(1) InsO). If it is not, the claim is not taken into account in the distribution of the proceeds, even if it has been finally admitted in the meantime (Section 189(3) InsO). If, however, the evidence is provided in good time, the share allocated to the claim is retained from distribution while the action is pending (Section 189(2) InsO). If the action for admission of the claim is finally dismissed, the retained share is distributed to the other ordinary creditors. If an enforceable title already exists for the contested claim, an action must be brought not by the creditor, but by the objector (Section 179(2) InsO). Judgments determining a claim or sustaining an objection are not merely effective *inter partes*, but are also binding on the insolvency administrator and all ordinary creditors (Section 183(1) InsO).
Ordinary creditors who have not registered their claim for inclusion in the schedule cannot share in the proceeds of the realisation and are unable to enforce their claim in any other way (Section 87 InsO). Claims for payment against the insolvency administrator are to be dismissed as inadmissible.

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

Unless otherwise provided in an insolvency plan, the insolvency administrator realises the assets belonging to the insolvency estate in order to convert the estate into money to be distributed to the creditors. The administrator exercises due discretion when deciding how to carry out the realisation, with the aim of maximising the proceeds. Possibilities include selling the debtor's enterprise or individual plants as a whole, or breaking up the enterprise and selling the individual assets separately.
Before the proceeds of the realisation can be distributed to the ordinary creditors, it is first necessary to satisfy the claims of the secured creditors and creditors with claims on the estate itself. The distribution of the proceeds is based on a distribution list (Section 188 InsO) to be drawn up by the insolvency administrator on the basis of the schedule of debts (Section 175 InsO). This list must contain all insolvency claims to be taken into account in the distribution. The proceeds are then distributed to the creditors in proportion to the amount of their claims. The subordinated ordinary creditors rank behind the ordinary creditors. They are satisfied only if all other ordinary creditors have been satisfied in full. Since their chances of satisfaction are low, they need file their claims only if requested to do so by the insolvency court (Section 174(3) InsO).
As a rule, the distribution does not wait until the realisation of the insolvency estate has been completed. Rather, as soon as sufficient cash is available in the insolvency estate, payments are made on account (Section 187(2), first sentence, InsO). When the realisation has been completed, the final distribution takes place (Section 196(1) InsO). It requires the approval of the insolvency court (Section 196(2) InsO). If the claims of all ordinary creditors (including subordinated creditors) can be satisfied in full (which in practice is rarely the case), the administrator transfers any remaining surplus to the debtor (Section 199, first sentence, InsO).
If a creditor has a right to a secured claim over an asset belonging to the insolvency estate and the proceeds obtained are insufficient to satisfy their claim in full, the creditor may register an additional claim *in personam* for inclusion in the schedule, but only to the extent that their secured claim has failed. (Alternatively, they may waive their secured claim and instead register a claim *in personam* against the debtor for inclusion in the schedule for the full amount) (Section 52, second sentence, InsO).
If a third party satisfies the claim of a creditor holding *in rem* security against the debtor, the third party does not automatically take the place of the secured creditor. However, in certain cases, subrogation is provided for by law and may also be agreed contractually. This is not a special feature of insolvency proceedings, but results from the rules of ordinary law. If, for example, the creditor has *in rem* security and receives satisfaction not from the debtor, but from a third party who stands guarantor for the claim on the insolvent debtor, the creditor's claim against the debtor is transferred to the guarantor under statutory subrogation (Section 774(1), first sentence, of the Civil Code (*Bürgerliches Gesetzbuch* – BGB)). For accessory security rights, such as a mortgage or pledge, for example, the Civil Code expressly provides that these are transferred to the guarantor (Sections 412, 401 BGB). Non-accessory security rights, such as a land charge created to secure a claim, are not transferred by operation of law to the guarantor. Nevertheless, a creditor with a contractual claim is required, by analogy, in accordance with Sections 412 and 401 of the Civil Code, to transfer the non-accessory securities to the guarantor, unless otherwise agreed between the parties. The guarantor then takes the place of the creditor with *in rem* security.

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

Standard procedure
After the final distribution has been carried out, the insolvency proceedings must be terminated (Section 200(1) InsO). The termination decision is published. With the termination of the insolvency proceedings, the right to manage and dispose of the assets caught by the insolvency reverts to the debtor.
After the termination of the insolvency proceedings, the ordinary creditors may in principle enforce their residual claims against the debtor without restriction, since the claim is extinguished only to the amount of the dividend paid. For the enforcement of the share of the claim not satisfied, Section 201(2) InsO provides that ordinary creditors may enforce their claims against the debtor on the legal basis of their entry in the schedule, as under an enforceable judgment, provided that the claims have been determined and have not been contested by the debtor at the verification hearing. Conversely, it may be inferred from the same Section 201(2) InsO that in other cases creditors must enforce their claim against the debtor by bringing a legal action.
An exception applies for natural persons. They have the option of applying for a discharge of residual debt (*Restschuldbefreiung*, Sections 201(3), 286 et seq. InsO). A discharge of residual debt may be granted after a period of good conduct generally of 3 years, in which the debtor must assign all income that is available for attachment to a trustee (*Treuhänder*). The discharge has binding effect upon all ordinary creditors, including those who did not file their claims (Section 301(1) InsO). This means that the ordinary creditors are definitively prevented from enforcing their claims against the debtor (exception: the claims referred to in Section 302 InsO that are excluded from the grant of discharge of residual debt).
A legal person that has been the subject of insolvency proceedings and no longer possesses any assets is automatically deleted from the commercial register and ceases to exist.
Insolvency plan procedure

The insolvency plan procedure enables secured creditors and ordinary creditors to decide themselves on the realisation of the insolvency estate, its distribution among the creditors, the handling of the proceedings and the liability of the debtor after the termination of insolvency proceedings. This is done in an insolvency plan, by way of derogation from the provisions of the Insolvency Code (Section 217(1), first sentence, InsO). Reorganisation and an insolvency plan are not the same thing. An insolvency plan plays a key role in the reorganisation of an enterprise, but can also be the basis for winding up the enterprise, and may, for example, provide for the realisation of the insolvency estate and its distribution to the parties involved by way of derogation from the provisions of the Insolvency Code.

In addition to the possibility of discharge of residual debt, the insolvency plan offers an important means for the debtor to overcome obstructive creditors. Section 245 InsO provides that under certain conditions the acceptance of a voting group may be deemed to have been granted even if the required majorities have not been reached.

An insolvency plan may be put forward either by the insolvency administrator or by the debtor (Section 218(1), first sentence, InsO). The insolvency plan consists of a declaratory part (*darstellender Teil*) and an organisational part (*gestaltender Teil*) (Section 219, first sentence, InsO). The declaratory part describes which measures have already been taken after the opening of insolvency proceedings and which measures are still to be taken in order to establish the basis for the envisaged arrangement of the rights of the parties concerned (Section 220(1) InsO). The organisational part determines how the legal position of the parties involved is to change (Section 221, first sentence, InsO). Under Section 217, second sentence, InsO, if the debtor is not a natural person, membership rights and shares in debtor equity may also be included in the insolvency plan. Section 225a(2) InsO allows a debt-to-equity swap to convert creditors' claims into shares in debtor equity governed by company law. The voting mechanism provided for in Sections 243 et seq. InsO is of particular interest. The organisational part of the insolvency plan defines various voting groups. The insolvency plan is accepted only if it is approved by a majority of voting creditors in each group (majority of creditors) and the sum of the claims of the creditors voting in favour amounts to more than half the total claims of all the creditors voting (majority of total claims). Under certain conditions, however, the Code deems a voting group to have consented even if the necessary majorities have not been achieved (Section 245 InsO). This 'prohibition of obstruction' (*Obstruktionsverbot*) is designed to prevent individual creditors or shareholders from causing the plan to fail. In accordance with Section 247 InsO, the debtor too must consent to the plan. Opposition on the part of the debtor is, however, irrelevant if the plan is unlikely to leave them any worse off than they would be without it, and if no creditor receives an economic value exceeding the full amount of their claim.

Following acceptance of the insolvency plan by the parties involved and consent by the debtor, the plan is confirmed by the insolvency court. The court confirms the plan if all essential procedural requirements have been fulfilled and no application has been made by a creditor or shareholder claiming that they are likely to be left worse off by the plan than they would have been without it (Section 251 InsO). In order to prevent the plan failing as a result of such opposition, the organisational part of the plan may provide for funds to be made available in the event that a party shows that they will be left worse off (Section 251(3) InsO).

The decision confirming the plan may be contested only to a limited extent (Section 253 InsO).

Once the confirmation of the insolvency plan is no longer open to challenge, and the plan does not provide otherwise, the insolvency court terminates the insolvency proceedings (Section 258(1) InsO). The right of disposal of the debtor's property reverts to the debtor. The effects provided for in the organisational part of the plan become binding for and against all parties involved, irrespective of whether they have registered their claims or objected to the insolvency plan as parties with an interest (Section 254b InsO). This means that a waiver, suspension or the like provided for in the insolvency plan takes effect *ipso jure*, without the need for any separate declaration of intent (Section 254a(1) InsO). The insolvency plan does not in principle affect the rights of ordinary creditors against third parties. If the plan so provides, an exception applies for intra-group third-party collateral (*gruppeninterne Drittsicherheiten*) which has been provided to the creditor by an enterprise affiliated with the debtor within the meaning of Section 15 of the Law on Share Companies (*Aktiengesetz* – AktG) (e.g. a subsidiary) (Sections 217(2) and 223a InsO).

In order to ensure that the debtor complies with the obligations imposed on them by the insolvency plan, the plan may provide for the debtor to be monitored by the insolvency administrator. During the period of monitoring, the insolvency administrator must report each year to the court and to the creditors' committee, if such a committee has been appointed, on the current situation and future prospects of completion of the insolvency plan (Section 261(2), first sentence, InsO).

Irrespective of whether such monitoring is ordered, the 'revival clause' (*Wiederauflebensklausel*) provided for in Section 255 InsO operates to ensure compliance with the plan by the debtor. If claims held by ordinary creditors have been deferred or partly waived on the basis of the organisational part of the insolvency plan, such deferral or waiver is, under that provision, no longer binding on the creditor if the debtor falls substantially behind in the implementation of the plan with respect to that creditor (Section 255(1) InsO). The same applies with regard to all ordinary creditors if, during the phase of implementation of the plan, new insolvency proceedings are opened in respect of the debtor's assets (Section 255(2) InsO). Ordinary creditors with admitted claims that were not contested by the debtor at the verification hearing, and which they hold under a confirmed and final insolvency plan in conjunction with entry in the schedule, may enforce those claims against the debtor in the same way as they would under an enforceable judgment (Section 257(1), first sentence, InsO).

If the insolvency plan is the basis of a reorganisation of the enterprise, loans will often be required for the operation. To protect lenders, the organisational part of the insolvency plan may provide for a ceiling on loans (Section 264 InsO). Provided that the new lender's claim remains below the ceiling, the effect of the agreement of such a ceiling is that the ordinary creditors rank behind the new lender in any fresh insolvency proceedings.

The insolvency plan procedure allows the debtor to achieve a discharge of residual debt irrespective of the procedure for such discharge outlined above. The Code states that, unless the insolvency plan provides otherwise, debtors are discharged from their residual debts to their creditors if they satisfy the creditors in the manner provided for in the insolvency plan (Section 227(1) InsO).

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

For details of the creditors' rights after the closure of insolvency proceedings, see the answer to the question 'What are the conditions for, and the effects of, closure of the insolvency proceedings (in particular by composition)?'

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

Under German law, the costs of insolvency proceedings are to be paid in advance from the insolvency estate and take precedence over the claims of ordinary creditors as obligations incumbent on the estate (Section 53 InsO). In accordance with Section 54 InsO, the costs of insolvency proceedings include the court fees in respect of the proceedings and the remuneration earned and expenses incurred by the provisional insolvency administrator, the insolvency administrator and members of the creditors' committee.

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

In order to prevent actions detrimental to creditors, the acquisition of assets belonging to the insolvency estate after the opening of proceedings is in principle void, whereas the acquisition before the opening of proceedings of assets that would belong to the insolvency estate after the opening is in principle valid, but may under certain circumstances be contested.

Since, on the opening of insolvency proceedings, the right of debtors to dispose of their property is vested in the insolvency administrator, disposal by the debtor of an asset belonging to the insolvency estate after the proceedings have been opened is in principle absolutely invalid (the main exception being

where there is an acquisition in good faith of land, although this may be contested) (Section 81(1), first sentence, InsO). Moreover, it is in principle not possible for rights to an asset belonging to the insolvency estate to be acquired if the debtor has disposed of an asset belonging to the estate before insolvency proceedings are opened but the result occurs only afterwards (Section 91(1) InsO) (the main exception being the acquisition of land, Section 91 (2) InsO). Rights of security acquired as a result of enforcement proceedings during the last month preceding the application to open insolvency proceedings, or after such application, likewise become ineffective once the proceedings are opened (Section 88(1) InsO).
It follows from Sections 129 et seq. InsO that an acquisition from the insolvency estate before proceedings are opened, unlike an acquisition after the proceedings are opened, is in principle effective, but may be contested under certain conditions. This right to contest an insolvent debtor's transactions is of decisive importance for the functioning of insolvency law, since it allows the insolvency administrator access to outflows from the debtor's assets that took place before insolvency proceedings are opened. It can help greatly to increase the insolvency estate, and thus to ensure that insolvency law makes good on its claim to provide equal satisfaction for the creditors in an orderly fashion and to prevent preferential treatment of individual creditors. If the insolvency administrator successfully exercises a right to contest, the party who benefited as a result of the contested transaction must return everything that has been withdrawn from the insolvency debtor's assets as a result of the transaction. If this is not possible in kind, the administrator must pay compensation. The insolvency administrator can bring an action to enforce the right to restitution and may rely on the right to restitution against any opposing claims brought by a creditor. If the recipient of a benefit under a contestable transaction restores the property received, any counterclaim they may have is revived (Section 144 InsO).
To be contestable, a transaction entered into prior to the opening of insolvency proceedings must disadvantage the ordinary creditors (Section 129 InsO), and one of the grounds provided for in Sections 130 to 136 InsO must be present. Any legal act, i.e. any conduct (including an omission, Section 129(2) InsO) that creates a legal effect, may be contested (Federal Court of Justice, judgment of 12 February 2004 – IX ZR 98/03 – paragraph 12). Unless otherwise provided in the Code, it is immaterial whether the legal act is undertaken by the debtor. Furthermore, whether a contractual or legal effect is involved is not a decisive factor (Federal Court of Justice, judgment of 7 May 2013 – IX ZR 191/12 – paragraph 6).
A ground for contesting a transaction is, in particular, provided by:
a gratuitous benefit granted by the debtor, unless it was made more than 4 years before the application to open insolvency proceedings (Section 134 InsO);
legal acts performed by the debtor in the last 10 years prior to the application to open insolvency proceedings with the intention of disadvantaging their creditors, if the other party was aware of the debtor's intention (Section 133 InsO). The period is only 4 years if the act made it possible for the other party to provide a security or satisfaction;
legal acts performed by the debtor in the last 3 months prior to the application to open insolvency proceedings that directly disadvantage the creditors, if the debtor was already insolvent and the other party was aware of this (Section 132(1)(1) InsO);
legal acts granting an ordinary creditor a security or satisfaction to which they are not entitled, if the act was performed in the last month prior to the application to open insolvency proceedings (Section 131(1)(1) InsO);
legal acts granting an ordinary creditor a security or satisfaction to which they are not entitled, if the act was performed in the last 3 months prior to the application to open insolvency proceedings and the debtor was insolvent at the time of the act and the other party was aware of this (Section 130(1)(1) InsO).
In these cases, both the debtor and the creditor receiving the benefit may also incur criminal liability (Sections 283 to 283d of the Criminal Code).

Consumer insolvency proceedings

Consumer insolvency proceedings (*Verbraucherinsolvenzverfahren*) apply to natural persons who do not pursue and have not pursued any self-employed business activity and to those who have pursued self-employed business activity but whose financial situation is straightforward and against whom there are no claims arising out of employment relationships (Section 304(1), first sentence, InsO). In contrast to the standard insolvency procedure, the focus is not on the realisation of assets, but on the consumer's discharge from debt.
The procedure differs from the standard one mainly when the application is made by the debtor alone or with others. In this case, the decision to open insolvency proceedings is preceded by an out-of-court stage aimed at reaching an arrangement with the creditors in respect of settling the debt, based on a plan (Section 305(1)(1) InsO). If an attempt to reach an out-of-court arrangement has failed, the debtor may file an application to open insolvency proceedings.
A stage follows in which the opening proceedings are suspended and the insolvency court gives the creditors the opportunity to reach agreement with the debtor in a debt settlement plan (*Schuldenbereinigungsplan*). If the debt settlement plan materialises, the claims of the creditors are then governed only by that plan, which is enforceable in the same way as a settlement reached in court proceedings (*Prozessvergleich*) (Section 308(1), second sentence, InsO). Applications for the opening of insolvency proceedings and for the grant of discharge of residual debt are deemed to have been withdrawn (Section 308(2) InsO). If agreement is not reached on a debt settlement plan, opening proceedings are resumed.

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Insolvency/bankruptcy - Estonia

Estonian legislation prescribes three different insolvency proceedings: bankruptcy proceedings, reorganisation proceedings and debt restructuring proceedings. The filing and processing of bankruptcy petitions and the conduct of bankruptcy proceedings in respect of a legal person are governed by the Bankruptcy Act. Reorganisation proceedings, with the help of which a legal person can restructure their obligations, are governed by the Reorganisation Act. The opening and conduct of insolvency proceedings in respect of a natural person, regardless of whether the person is self-employed, are governed by the Natural Person Insolvency Act. The Natural Person Insolvency Act also governs the filing of insolvency petitions in respect of a natural person. Through an insolvency petition, it is possible to open all types of insolvency proceedings in respect of a debtor who is a natural person: to declare bankruptcy, to declare bankruptcy and open proceedings to release the debtor from their obligations, or to open debt restructuring proceedings. If bankruptcy is declared, this is not governed by the Natural Person Insolvency Act; bankruptcy proceedings are conducted pursuant to the provisions of the Bankruptcy Act. The way in which bankruptcy proceedings are conducted for legal persons and natural persons is similar. The Acts are available in Estonian and in English from Estonia's official online publication, *Riigi Teataja* (State Gazette) (https://www.riigiteataja.ee/index.html).
The aim of bankruptcy proceedings is to satisfy creditors' claims out of the debtor's assets by transferring the debtor's assets or rehabilitating the debtor's enterprise. A debtor who is a natural person is given the opportunity to be released from their obligations through bankruptcy proceedings. In the course of bankruptcy proceedings, the cause of the debtor's insolvency is ascertained.

The aim of reorganising an undertaking is to overcome its economic difficulties, restore its liquidity, improve its profitability and ensure its sustainable management by applying a set of measures on the basis of a reorganisation plan. The reorganisation of an undertaking does not restrict its other options for avoiding insolvency. In reorganisation proceedings, it is important to protect and take account of the interests and rights of the undertaking, creditors and any third parties.

The aim of restructuring debt is to overcome the debtor's solvency problems and avoid bankruptcy proceedings. The legitimate interests of the debtor and of their creditors are taken into account. Debt restructuring proceedings make it possible for a debtor to restructure their financial obligations (personal debts) by way of extending the term for performing an obligation, honouring the obligation in instalments or reducing the obligation.

The scope of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) covers bankruptcy proceedings and debt restructuring proceedings.

1 Who may insolvency proceedings be brought against?

Pursuant to Estonian law, a natural person is a human being, and in insolvency law no distinction is drawn between natural persons in terms of whether or not they act in a commercial or professional capacity (in other words there is no distinction between self-employed persons and consumers). A legal person is a legal entity founded pursuant to law. A legal person is either a legal person in private law or a legal person in public law. 'Legal person in private law' means a legal person founded in private interests and pursuant to an Act concerning the corresponding type of legal person. General partnerships, limited partnerships, private limited companies, public limited companies, commercial associations, foundations and non-profit associations are legal persons in private law. The state, local authorities and other legal persons founded in the public interest and pursuant to an Act concerning that legal person are legal persons in public law.

1. Bankruptcy proceedings

Bankruptcy proceedings are conducted in respect of insolvent legal and natural persons. The state or a local authority cannot be bankrupt.

2. Reorganisation proceedings

Reorganisation proceedings are conducted only in respect of legal persons in private law.

3. Debt restructuring proceedings

Debt restructuring proceedings are conducted in respect of natural persons experiencing solvency problems, regardless of whether they are self-employed.

4. Proceedings for release from obligations

Proceedings to release a natural person from their obligations are conducted in respect of natural persons experiencing solvency problems, regardless of whether they are self-employed.

2 What are the conditions for opening insolvency proceedings?

1. Opening insolvency proceedings in respect of a debtor who is a legal person

1.1. Bankruptcy proceedings

Bankruptcy means a debtor's insolvency declared by a court ruling. Thus, the first main precondition for the opening of bankruptcy proceedings is the fact that the debtor is insolvent.

A debtor is insolvent if the debtor is unable to satisfy the creditors' claims that have fallen due and, due to the debtor's financial situation, that inability is not temporary. A debtor who is a legal person is also insolvent if the debtor's assets are insufficient to cover its obligations and, due to the debtor's financial situation, that insufficiency is not temporary. Claims that have not fallen due are also regarded as obligations. If a bankruptcy petition is filed by the debtor, the court will declare bankruptcy also if insolvency is likely to occur in the future. If a bankruptcy petition is filed by the debtor, the debtor is presumed to be insolvent.

The second main precondition for the opening of bankruptcy proceedings is the filing of a bankruptcy petition, and it may be filed by the debtor or a creditor. If a bankruptcy petition is filed by the debtor, the debtor must substantiate their insolvency in the bankruptcy petition. If a bankruptcy petition is filed by a creditor, the creditor must substantiate the debtor's insolvency and prove the existence of the claim in the bankruptcy petition. In the cases provided by law, other persons may also file bankruptcy petitions, in which case the provisions concerning creditors apply to the persons unless otherwise provided by law.

The court may require the petitioning creditor to pay the amount of money set by the court as a court deposit in order to cover the interim trustee's remuneration and expenses if there are grounds for believing that the bankruptcy estate is insufficient to cover them. If the creditor fails to pay the deposit, the proceedings will be closed. Where the petitioning creditors are employees of an insolvent employer who do not pay the amount set as the deposit in order for the bankruptcy proceedings to continue, they are entitled to apply for insolvency benefit from the state (through *Eesti Töötukassa* [the Estonian Unemployment Insurance Fund]).

The court will refuse to admit the creditor's bankruptcy petition if the bankruptcy petition does not reveal that the petitioner has a claim against the debtor, the bankruptcy petition does not substantiate the debtor's insolvency or the bankruptcy petition is based on a claim in respect of which a reorganisation plan applies. The court will also refuse to admit a bankruptcy petition if any other grounds provided for in the Code of Civil Procedure exist.

Before bankruptcy is declared and bankruptcy proceedings are opened, so-called preliminary proceedings are conducted. If the court decides to admit a bankruptcy petition, it will appoint an interim trustee. The court may also refuse to appoint an interim trustee, taking into account the debtor's financial situation, and declare the debtor bankrupt. If the court does not appoint an interim trustee, the proceedings will not be continued on the basis of the bankruptcy petition and the proceedings will be closed. The interim trustee determines the debtor's assets, including the debtor's obligations and the enforcement proceedings concerning the debtor's assets, and checks whether the debtor's assets are sufficient to cover the costs and expenses incurred in the bankruptcy proceedings. The interim trustee provides an assessment of the debtor's financial situation and solvency and of the prospects for the activities of the debtor's enterprise to continue and, if the debtor is a legal person, for the debtor's rehabilitation, ensures that the debtor's assets are preserved, etc. The activities of the interim trustee must reveal whether the bankruptcy petition is to be satisfied or dismissed.

The court will close proceedings by abatement without declaring bankruptcy, regardless of the debtor's insolvency, if the debtor's assets are insufficient to cover the costs and expenses incurred in the bankruptcy proceedings and if it is impossible to recover or reclaim the assets or submit a claim against a member of a management body.

The court declares bankruptcy by a ruling (bankruptcy ruling). A bankruptcy ruling must set out the time of the declaration of bankruptcy. Bankruptcy proceedings start with the declaration of bankruptcy.

If the court has declared bankruptcy, it will publish a notice to this effect (bankruptcy notice) without delay in the official publication *Ametlikud Teadaanded* (Official Announcements).

A bankruptcy ruling is subject to immediate execution. Execution of a bankruptcy ruling cannot be suspended or postponed, and the manner or procedure provided for by law for the execution of the bankruptcy ruling cannot be changed. If a higher court annuls a bankruptcy ruling, this does not affect the validity of the legal acts performed by or in respect of the trustee. The debtor and the petitioning creditor may file appeals against the bankruptcy ruling within 15 days of the publication of the bankruptcy notice. The debtor and the bankruptcy petitioner may file appeals with the Supreme Court against the district court ruling on the appeal against the ruling. The trustee may not file an appeal on behalf of the debtor or represent the debtor in the hearing of an appeal.

If a notice or procedural document is to be published in bankruptcy proceedings, the notice or procedural document must be published in *Ametlikud Teadaanded*. The court may publish a notice concerning the time and place of the hearing of a bankruptcy petition in *Ametlikud Teadaanded*. A notice concerning a bankruptcy ruling declaring a debtor bankrupt (bankruptcy notice) will be published by the court without delay in *Ametlikud Teadaanded*.

1.2. Reorganisation proceedings

In order to open reorganisation proceedings for an enterprise, the undertaking submits a corresponding petition.

The court will open reorganisation proceedings if the reorganisation petition meets the requirements set in the Code of Civil Procedure and the Reorganisation Act and if the undertaking has provided a justified argument indicating that:

1. it is likely to become insolvent in the future;
2. the enterprise requires reorganisation;
3. sustainable management of the enterprise is likely after the reorganisation.

With the consent of an undertaking, a reorganisation petition may also be filed in respect of the undertaking by a creditor of the undertaking.

Reorganisation proceedings will be opened if the reorganisation petition meets the requirements set in law and the undertaking or creditor has provided a justified argument indicating that the undertaking is not permanently insolvent, but is likely to become insolvent in the future; the undertaking requires reorganisation; sustainable management of the undertaking is likely after the reorganisation.

Reorganisation proceedings will not be opened if bankruptcy proceedings have been brought against the undertaking; a court ruling concerning the compulsory dissolution of the undertaking has been issued or supplementary liquidation is carried out; less than two years have passed since the closure of reorganisation proceedings in respect of the undertaking.

The court will open reorganisation proceedings by means of a reorganisation ruling within seven days of receiving a reorganisation petition.

Among other things, the following are set out in a reorganisation ruling:

1. the details of the person appointed as the reorganisation adviser;
2. the deadline for adopting the reorganisation plan;
3. the term during which the reorganisation plan is to be submitted to the court for approval (as a rule, it may not be more than 60 days; where necessary, the court may extend the term to 90 days);
4. the amount to be paid by the undertaking into the designated account as a deposit to cover the reorganisation adviser's remuneration and expenses, and the deadline by which the undertaking must pay it.

The effects of opening reorganisation proceedings are as follows:

1) the court suspends enforcement proceedings or other compulsory enforcement conducted regarding the assets of the undertaking until the reorganisation plan is approved or the reorganisation proceedings are closed, except in the event of enforcement proceedings conducted to fulfil a claim that has arisen on the basis of an employment relationship;

2) the court lifts the seizure imposed on the undertaking's assets or changes its contents on the basis of a request from the undertaking or reorganisation adviser, except in the case of seizure applied to the undertaking's assets to secure possible confiscation or substitution of confiscation in criminal proceedings or to secure a claim arising on the basis of an employment relationship if this is necessary to conduct reorganisation proceedings;

3) the calculation of default interest or a contractual penalty that increases over time on a claim against the undertaking is suspended until the reorganisation plan is approved;

4) the court may, on the basis of a request from an undertaking and with the approval of the reorganisation adviser, which is appended to the request, or on the basis of a request from the reorganisation adviser, suspend court proceedings involving a proprietary claim against the undertaking regarding which no judgment has yet been made, until the reorganisation plan is approved or the reorganisation proceedings are closed, except in the event of a claim lodged on the basis of an employment relationship, whereas the court does not suspend court proceedings in a criminal matter;

5) on the basis of a bankruptcy petition filed by a creditor, the court will postpone any decision to appoint an interim trustee in bankruptcy until the reorganisation plan is approved or the reorganisation proceedings are closed;

6) when reorganisation proceedings are opened, the undertaking retains the right of disposal over the undertaking's assets but must promptly inform the reorganisation adviser of any transactions that are beyond the scope of regular business activities.

Where an undertaking requests the stay of other measures, in particular of the exercise of a right of security, the court may stay these measures on the basis of a request from the undertaking or reorganisation adviser until the reorganisation plan is approved or reorganisation proceedings are closed if this is necessary for reorganisation or assists with the negotiations to be held on the reorganisation plan. The measures may not be stayed in the case of claims arising on the basis of an employment relationship.

When reorganisation proceedings are opened, the term for recovering transactions or other acts provided for in the Bankruptcy Act and the Code of Enforcement Procedure is extended by the period of time from the opening of the reorganisation proceedings until the reorganisation proceedings are closed. The extended term may not exceed eight years before the appointment of an interim trustee or the beginning of the terms for recovery set out in the Code of Enforcement Procedure.

If the court has decided to open reorganisation proceedings and issued a reorganisation ruling, the reorganisation adviser will without delay send the creditors a reorganisation notice notifying them of the opening of reorganisation proceedings and of the size of the claims that they have against the undertaking according to the list of debts.

2. Opening insolvency proceedings in respect of a debtor who is a natural person

2.1. Filing an insolvency petition, appointing a trusted practitioner and hearing the petition

An insolvency petition against a debtor who is a natural person may be filed by the debtor themselves or by the debtor's creditor. Debtor spouses may file a joint insolvency petition. An insolvency petition can be used to open all types of insolvency proceedings for a debtor who is a natural person, including to declare bankruptcy.

An insolvency petition must be submitted in accordance with the forms established on the basis of Section 9 of the Natural Person Insolvency Act, the use of which is mandatory.

In the petition, the debtor must explain the nature of their solvency problems and provide an overview of their financial situation, including their assets, liabilities, income and expenses. In the insolvency petition, the creditor must also substantiate the debtor's insolvency or explain the nature of the debtor's solvency problems consist in.

An insolvency petition is to be submitted to the county court of either the residence of the debtor or the registered office of an enterprise of the self-employed person. It is presumed that the residence indicated in the population register one year before the submission of the insolvency petition is the residence of the natural person and that the registered office indicated in the register one year before the submission of the insolvency petition is the registered office of the

enterprise of the self-employed person, unless it is proved that the debtor's residence or registered office is elsewhere. A joint insolvency petition of spouses is to be submitted to the county court of the spouses' joint residence. Where spouses do not have a joint residence, the petition is to be submitted to the county court of the residence, or the registered office of an enterprise, of one of the spouses as chosen by the spouses.
The court decides whether to admit the petition. If the court admits the petition, it appoints a trusted practitioner for the debtor.
If a trusted practitioner is appointed, the calculation of default interest or a contractual penalty that increases over time on a claim against the debtor is suspended until the restructuring plan is approved or the debt restructuring proceedings are closed. This does not apply to claims that the debtor is not seeking to restructure or if the debtor is declared bankrupt. If a trusted practitioner is appointed, a creditor cannot terminate a contract that has been entered into with the debtor by relying on a breach of a financial obligation that occurred before the insolvency petition was submitted or refuse to perform their obligations under such a contract unless the court authorises this.
When appointing a trusted practitioner, the court suspends enforcement proceedings or other compulsory enforcement for the collection of money conducted with regard to the debtor's assets until bankruptcy is declared, the restructuring plan is approved or the proceedings are closed. The court may, until the same time:
1) suspend court proceedings involving a financial claim against the debtor regarding which no judgment has yet been made;
2) cancel measures for securing an action, including the seizure of a payment account;
3) prohibit creditors from exercising their rights arising from the collateral given by the debtor, including from selling or requesting the sale of the object of pledge;
4) apply another measure of provisional legal protection, including measures securing a bankruptcy petition.
The court will not suspend court proceedings concerning deciding on the imposition of a pecuniary punishment or confiscation or substitution thereof in criminal proceedings or concerning hearing appeals against fines imposed in misdemeanour matters and will not use other measures referred to in subsection 3 of this Section in respect of seizure or judicial mortgage imposed on the debtor's assets to secure possible confiscation or substitution of confiscation in criminal proceedings.
Taking account of the creditor's legitimate interests, the court may, on the basis of the creditor's petition, allow suspended enforcement proceedings to continue and allow the creditor also to exercise the rights arising from the securities furnished by the debtor before bankruptcy is declared, the restructuring plan is approved or the proceedings are closed.
The trusted practitioner determines the debtor's financial situation, prepares a list of the debtor's assets and debts and submits it on behalf and with the approval of the debtor to the court. The trusted practitioner also provides the court with an assessment of which proceedings should be opened for adjudicating on the debtor's solvency problems. The court is not bound by the assessment.
Thereafter, the court hears the insolvency petition and makes one of the following judgments:
1) declares the debtor bankrupt;
2) declares the debtor bankrupt and opens proceedings to release the debtor from their obligations;
3) opens debt restructuring proceedings;
4) dismisses the petition; or
5) closes the proceedings by abatement.
2.2. Opening of debt restructuring proceedings
The court opens debt restructuring proceedings if the debtor has solvency problems but is not yet permanently insolvent, in particular if the debtor's solvency problems cannot clearly be overcome without conducting debt restructuring proceedings, among other things by selling the debtor's assets to cover its debts to an extent that can reasonably be expected from the debtor. A debtor is deemed to have solvency problems if they are unable or likely to be unable to perform their obligations at the time when they fall due.
Before debt restructuring proceedings are opened, the court will determine the amount that the debtor must transfer as a deposit to cover the trusted practitioner's remuneration and expenses to the account prescribed to this end, and the deadline by which the debtor must pay it. Taking into account the debtor's financial situation, the court may allow the amount determined to be paid in instalments during the proceedings.
The court may refuse to open debt restructuring proceedings if:
1) the debtor has, intentionally or due to gross negligence, submitted materially incorrect or incomplete information about their assets, income, creditors or obligations;
2) the debtor refuses to take an oath regarding the truthfulness of the information submitted or to submit additional information requested by the court;
3) the debtor has been convicted of a crime relating to bankruptcy proceedings or enforcement proceedings, a tax crime or a crime referred to in Sections 381 and 3811 of the Penal Code, and the information concerning the conviction has not been deleted from the criminal records database;
4) in the three years preceding submission of the petition or after submission of the petition, the debtor has, intentionally or due to gross negligence, submitted incorrect or incomplete information about their financial situation in order to obtain aid or other benefits from the state, a local authority or a foundation or to evade taxes;
5) in the three years preceding appointment of the trusted practitioner or after appointment of the trusted practitioner, the debtor has, intentionally or through gross negligence, hindered the satisfaction of the creditors' claims or intentionally concluded transactions damaging the creditors, and in this regard damaging the creditors' interests may consist of, among other things, hiding or squandering assets;
6) the debtor has failed to pay the amount determined by the court as a deposit to cover the trusted practitioner's remuneration and expenses to the account prescribed to this end.
The court refuses to open debt restructuring proceedings if it has already opened proceedings to restructure the debtor's debt in the ten years preceding submission of the petition or has decided to release the debtor from their obligations.
If the court opens proceedings to restructure the debtor's debt, it sets a term of up to 60 days during which the trusted practitioner must submit a restructuring plan to the court. Where necessary, the court may extend the term by up to 30 days.
If the court opens proceedings to restructure the debtor's debt, the term for recovering transactions or other acts provided for in the Bankruptcy Act and the Code of Enforcement Procedure is extended by the period of time from the appointment of the trusted practitioner until the debt restructuring proceedings are closed, but no more than eight years before the trusted practitioner is appointed or the terms for recovery specified in the Code of Enforcement Procedure begin.
After the proceedings are opened, the trusted practitioner, in cooperation with the debtor, prepares the debtor's debt restructuring plan and submits it on behalf and with the approval of the debtor to the court for approval.
2.3. Opening of bankruptcy proceedings and/or proceedings for release from obligations

The court declares a debtor who is a natural person bankrupt and conducts bankruptcy proceedings in accordance with the provisions of the Bankruptcy Act. The conduct of bankruptcy proceedings in respect of a natural person is similar to the conduct of bankruptcy proceedings in respect of a legal person (see section 1.1).

Together with declaring bankruptcy, it is possible to open proceedings to release a natural person from their obligations. It is possible to release the debtor from their obligations that have not been performed in bankruptcy proceedings. Obligations that arose before bankruptcy was declared can be included in the bankruptcy proceedings. As a general rule, proceedings for release from obligations last three years. During this period, the debtor must fulfil the creditors' claims as much as possible. In the course of the bankruptcy proceedings, all the debtor's assets are sold and used to fulfil the creditors' claims. The debtor must also engage in profitable activities or make reasonable efforts to find such activities. The debtor's income is also used to fulfil the creditors' claims. The law sets out an amount not subject to seizure for the debtor's minimum subsistence, and this is not used to fulfil the creditors' claims. If the debtor has paid an appreciable proportion of the creditors' claims, the debtor may be released from their obligations even before three years have passed, but no earlier than one year after the proceedings are opened. If the debtor breaches their obligations, but the breach is not serious, the court may extend the term for releasing the debtor from their obligations by up to one year. If the breach is serious, the court may refuse to release the debtor from their obligations.

3. Opening of bankruptcy proceedings regarding the estate of a natural person

If, in the event of the death of the debtor, the debtor's estate is insolvent, a bankruptcy petition may be filed to declare the debtor's estate bankrupt. In the event of the death of the debtor, a bankruptcy petition with respect to the debtor's assets may also be filed by a successor of the debtor, the executor of the debtor's will or the administrator of the debtor's estate. In this case, the provisions concerning bankruptcy petitions of debtors apply to the bankruptcy petition. Bankruptcy proceedings regarding the estate are conducted in accordance with the provisions of the Bankruptcy Act.

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?

When bankruptcy is declared, the debtor's assets become the bankruptcy estate and the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy.

The debtor's assets become the bankruptcy estate on the basis of a bankruptcy ruling and are used as assets designated for satisfying creditors' claims and conducting bankruptcy proceedings. The bankruptcy estate means the debtor's assets at the time of the declaration of bankruptcy, as well as assets reclaimed or recovered and assets acquired by the debtor during the bankruptcy proceedings. The debtor's assets on which, pursuant to law, no claim for payment may be made are not included in the bankruptcy estate.

Assets on which, pursuant to law, no claim for payment may be made are governed by the Code of Enforcement Procedure. The law prescribes a non-exhaustive list of objects not subject to seizure. The main aim of the catalogue of objects not subject to seizure is to ensure minimum social protection for the debtor. The prohibition on selling assets not subject to seizure also arises from the need to protect other fundamental rights: the right to freely choose one's area of activity, profession and position, the right to engage in entrepreneurial activity, the right to education, freedom of religion, protection of private and family life, etc. Furthermore, the seizure of certain objects is contrary to accepted principles of morality.

Pursuant to Estonian legislation, restrictions also apply to the seizure of income, and the main aim is to ensure that the debtor has the minimum means of subsistence necessary for themselves and their dependants in accordance with the conditions of the proceedings conducted in respect of the debtor.

After bankruptcy is declared, any dispositions by the debtor with regard to objects forming part of the bankruptcy estate are null and void. The assets transferred by the other party on the basis of a disposition are returned to the party if the assets remain in the bankruptcy estate, or compensation is provided if the bankruptcy estate has increased as a result of the transfer. If the debtor has disposed of their future claims before bankruptcy is declared, the disposition will become null and void when bankruptcy is declared in respect of the claims that have arisen after bankruptcy is declared. A debtor who is a natural person may dispose of the bankruptcy estate with the trustee's consent. Any dispositions without the trustee's consent are null and void.

After bankruptcy is declared, performance of an obligation that is included in the bankruptcy estate and is due to the debtor may only be accepted by the trustee. If the obligation was performed to the benefit of the debtor, the obligation is deemed to have been performed only if the assets transferred to perform the obligation are retained in the bankruptcy estate or the bankruptcy estate has increased as a result of the transfer. If the obligation was performed to the debtor's benefit before publication of the bankruptcy notice, the obligation is deemed to have been performed if the person who performed the obligation was not and did not need to be aware of the declaration of bankruptcy at the time of performing the obligation.

When reorganisation proceedings are opened, the undertaking retains the right of disposal over the undertaking's assets, but must promptly inform the reorganisation adviser of transactions that are beyond the scope of regular business activities.

In debt restructuring proceedings, a debtor who is a natural person, regardless of whether the person is self-employed, retains the right of disposal over their assets.

In proceedings for release from obligations, where these proceedings also continue after the bankruptcy proceedings have been closed, the debtor's income is subject to assignment or transfer to the trusted practitioner. The debtor does not have to transfer the income or the part of the income on which no claim for payment can be made in accordance with the provisions of the Code of Enforcement Act, or the aforementioned income or part of the income is subject to return to the debtor by the trusted practitioner.

4 What powers do the debtor and the insolvency practitioner have, respectively?

When bankruptcy is declared, a debtor who is a natural person forfeits their right to conclude transactions relating to the bankruptcy estate, and a debtor who is a legal person forfeits their right to conclude any transactions.

The debtor promptly provides the court, the interim trustee, the trustee, the bankruptcy committee and the Insolvency Division with the information that they need in connection with the bankruptcy proceedings both before and after bankruptcy is declared, in particular concerning the debtor's assets, including obligations, and business or professional activities. The debtor is required to provide the trustee with a balance sheet and an inventory of the debtor's assets, including liabilities, as at the date on which bankruptcy was declared.

The court may require the debtor to swear in court that the information submitted to the court concerning their assets, debts and business or professional activities is correct to the best of the debtor's knowledge.

The debtor must provide assistance to the interim trustee and the trustee in the performance of their duties.

The debtor may not leave Estonia without the permission of the court after bankruptcy is declared and before the debtor has taken an oath.

The court may impose a fine, compulsory attendance or arrest on the debtor in the event of non-compliance with a court order or in order to secure performance of an obligation provided by law.

The debtor has the right to examine the trustee's file and the court file of the bankruptcy matter. The trustee may, for justified reasons, deny the debtor's request to examine a document included in the trustee's file if this would be detrimental to the conduct of the bankruptcy proceedings.

Trustee in bankruptcy

• A trustee in bankruptcy enters into transactions relating to the bankruptcy estate and performs other acts. The rights and obligations arising as a result of the trustee's activities belong to the debtor. A trustee, in accordance with their duties, participates in court in disputes relating to the bankruptcy estate in lieu of the debtor.
• When bankruptcy is declared, the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy. In the bankruptcy proceedings of a debtor who is a legal person, the trustee may conclude any transactions and perform any legal acts with the bankruptcy estate. In the event of the bankruptcy of a debtor who is a natural person, the trustee may only conclude such transactions and perform such legal acts with the bankruptcy estate that are necessary to achieve the aim of the bankruptcy proceedings and to perform the trustee's duties.
• A trustee defends the rights and interests of all the creditors and the debtor and ensures that the bankruptcy proceedings are lawful, prompt and financially reasonable. The trustee must perform their obligations with the care expected of a diligent and honest trustee and take into account the interests of all the creditors and the debtor.
• The trustee determines the creditors' claims, administers the bankruptcy estate, organises its formation and sale and satisfaction of the creditors' claims out of the bankruptcy estate; ascertains the causes of the debtor's insolvency and the time when the insolvency arose; arranges for the debtor's business activities to continue, where necessary; conducts the liquidation of the debtor who is a legal person, where necessary; provides information to the creditors and the debtor in the cases prescribed by law; reports on their activities and provides information concerning the bankruptcy proceedings to the court, the supervisory official and the bankruptcy committee; performs other obligations provided for by law. If the debtor's insolvency was caused by a grave error in management, the trustee is required to lodge a claim for damages against the person liable for the error immediately after sufficient grounds for lodging a claim become evident. In addition to the trustee's rights provided for by law, a trustee also has the rights of an interim trustee.

5 Under which conditions may set-offs be invoked?

Set-offs are permitted in Estonian bankruptcy proceedings. Set-offs of claims in bankruptcy proceedings are subject to the following conditions:
1) the claims to be set off must be financial obligations or other obligations of the same type;
2) the creditor's right to perform their obligation must have arrived and the debtor's obligation must have fallen due;
3) the creditor must make a declaration of set-off to the debtor until the list of creditors is approved, and the declaration must not have been made conditionally or by setting a term;
4) the creditor's right to set off their claim against the debtor's claim must have arisen before bankruptcy was declared.
If the debtor's claim was contingent on a suspensive condition or was not yet due at the time bankruptcy was declared or is not directed at the performance of obligations of the same type, the claim may be set off only when the suspensive condition has arrived, the debtor's claim has fallen due or the obligations have become obligations of the same type. No set-off is permitted if the suspensive condition of the debtor's claim arrives or the claim falls due before the creditor could set off their claim.
If a creditor's claim has expired, they may still set off the claim if the right to the set-off arose before expiry of the claim. A creditor may also set off a claim resulting from the debtor's failure to honour a contract which arose from the fact that the trustee waived the debtor's obligation after bankruptcy was declared. If the object of a contractual obligation is divisible and the creditor has performed their obligation in part by the time bankruptcy is declared, the creditor may make a set-off in respect of the debtor's financial obligation corresponding to that part of the creditor's obligation that has been performed. If the debtor is a residential or commercial lessor and the residential or commercial lessee has paid the debtor the rent for immovable property or premises in advance before bankruptcy is declared, this constitutes a claim of unjustified enrichment against the debtor which the residential or commercial lessee may set off against the debtor's claim against the residential or commercial lessee, and the residential or commercial lessee may also set off a claim for damages resulting from premature termination of the contract or withdrawal from the contract.
A claim acquired through assignment may be set off in bankruptcy proceedings only if the claim was assigned and the debtor was notified thereof in writing no later than three months before bankruptcy was declared. A claim against the debtor that is acquired through assignment cannot be set off if the claim was assigned within the three years preceding the appointment of an interim trustee or a trusted practitioner and the debtor was insolvent at that time and the person who acquired the claim was or should have been aware of the insolvency at the time of assignment.
An admitted claim secured by a pledge, including if the claim has been acquired through assignment, may be set off when the same object of pledge is sold at the purchase price of the object of pledge to an extent equivalent to the amount that the creditor would be entitled to receive when the amount of money received from the sale of the object bought by the creditor is distributed, and from which payments and expenses, such as consolidated obligations and the costs and expenses incurred in the bankruptcy proceedings, subject to payment before payment of money on the basis of distribution ratios have been deducted. Any part of the purchase price that cannot be set off against the creditor's claim is paid by the creditor into the bankruptcy estate.
Claims that cannot be set off include claims for maintenance, claims for compensation arising from damage to health or the death of a person and claims arising from the unlawful and intentional causing of damage which the other party has against the party requesting set-off; the other party's claims on which no claim for payment can be made pursuant to law; a seized claim against the party's claim against the other party if the party requesting set-off acquired the claim after the seizure or if their claim fell due after the seizure and later than the seized claim; a claim against which the other party may raise objections or the other party's claim whose set-off is not permitted on other grounds arising from law.
Set-offs are not regulated separately in the event of reorganisation proceedings and debt restructuring proceedings, and so the general procedure under the Law of Obligations Act applies to them.

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

Bankruptcy proceedings
A trustee has the right to perform an unperformed obligation arising from a contract entered into by the debtor and require the other party to perform their obligations or waive the debtor's obligation arising from a contract, unless otherwise provided for by law. The trustee may not waive the debtor's obligation arising from a contract if the obligation is secured by an advance notice entered in the land register. If the trustee continues to perform the debtor's obligation or gives notice that they intend to perform the obligation, the other party to the contract will continue to perform their obligations. In this case, the trustee forfeits their right to refuse to perform the debtor's obligation. If the trustee requires the other party to the contract to honour the contract, the other party may require the trustee to secure performance of the debtor's obligation. The other party may refuse to perform their obligation, withdraw from the contract or cancel the contract until the trustee has secured performance of the debtor's obligation. The other party's claim against the debtor which has arisen from an obligation being performed after the trustee has required the obligation to be performed by the other party is a consolidated obligation. If the trustee waived the debtor's obligation after bankruptcy was declared, the other party to the contract may lodge a claim arising from failure to honour the contract as a creditor in the bankruptcy proceedings. If the object of a contractual obligation is divisible and the other party has performed their obligation in part by the time bankruptcy is declared, the other party can require that the debtor's financial obligation be performed to an extent corresponding to the share of the other party's obligation that has been performed only as a creditor in the bankruptcy proceedings.
The law also sets out special cases for certain types of contract:

1) if a debtor has sold movable property with reservation of ownership before bankruptcy is declared and has transferred possession of the movable property to the purchaser, the purchaser has the right to require that the sales contract be honoured. In this case, the trustee may not waive the debtor's obligations arising from the sales contract;
2) the bankruptcy of a residential or commercial lessor does not serve as a basis for termination of the residential or commercial lease contract, unless the contract provides otherwise. If the residential or commercial lease contract provides for bankruptcy as a basis for termination of the contract, the trustee may cancel the contract within a termination period of one month, or less if this is prescribed in the contract. The bankruptcy of a residential lessor of a dwelling does not serve as a basis for termination of the residential lease contract of the dwelling. If the rent for immovable property or premises has been paid to the debtor in advance before bankruptcy is declared, the residential or commercial lessee may set off a claim for unjustified enrichment against the debtor's claim against the residential or commercial lessee;
3) in the event of the bankruptcy of a residential or commercial lessee, the residential or commercial lessor may terminate the residential or commercial lease contract only pursuant to the general procedure, and the residential or commercial lease contract may not be cancelled due to a delay in the payment of the rent if the delay concerns payment of rent owed before the bankruptcy petition was submitted. A trustee has the right to cancel the residential or commercial lease contract entered into by the debtor within a termination period of one month, or less if this is prescribed in the contract. If immovable property or premises have not been transferred into the debtor's possession by the time bankruptcy is declared, both the trustee and the other party may withdraw from the contract. In the event of withdrawal from or cancellation of the contract, the other party may demand compensation for losses arising from the premature termination of the contract as a creditor in the bankruptcy proceedings or by set-off;
4) the procedure for a residential and commercial lease contract also applies to the leasing contracts entered into by the debtor.
A trustee has the right to decide on the continuation or termination of a contract, but if the other party makes a proposal to the trustee to exercise that choice, the trustee must immediately, but no later than within seven days, give notice of whether they will perform or waive the debtor's obligation. At the request of a trustee, the court may also extend that period. If the trustee fails to give notice in time of performing the obligation or of waiving it, the trustee does not have the right to require the other party to honour the contract before the trustee has performed the debtor's obligation.
It is also possible that some contracts entered into by the debtor are recoverable. For example, the court revokes contracts that have been entered into during the period from the appointment of an interim trustee until bankruptcy is declared. In addition to the condition as regards time, a precondition for recovery is that the contract has damaged the creditors' interests. If the creditors' interests have not been damaged and the bankruptcy estate does not increase as a result of recovery, there is no point in performing the recovery.
Generally, a debtor who is bankrupt or their trustee does not have the right to amend contracts. However, contracts may be amended if a composition is entered into following the declaration of bankruptcy. In this case, it is possible to reduce debts or extend the term for payment as a result of an agreement between the debtor and the creditors. The same result can also be achieved through reorganisation proceedings or debt restructuring proceedings. The Bankruptcy Act, the Reorganisation Act and the Natural Person Insolvency Act do not cover the assignment of claims or assumption of obligations separately, and thus the general procedure that is provided for in the Law of Obligations Act applies.
Reorganisation proceedings
The restructuring of contracts by a reorganisation plan is permitted in reorganisation proceedings.
An agreement pursuant to which a creditor may withhold performance of, accelerate, terminate or, in any other way to the detriment of an undertaking, modify a contract due to the filing of a reorganisation petition, opening of reorganisation proceedings, approval of a reorganisation plan, filing of a request to stay debt recovery measures or stay of such measures is null and void.
The creditor may not withhold performance of, accelerate, terminate or, in any other way to the detriment of an undertaking, modify essential executory contracts during the stay of the measures, as a result of debts that came into existence prior to the stay of the debt recovery measures referred to in the Reorganisation Act and solely by virtue of the fact that they have not been paid by the undertaking. The restriction does not apply to credit and financing contracts. If the imposition of the restriction on the creditor is disproportionately burdensome, the court may terminate it prematurely.
A claim arising under an employment contract or from a transaction with derivatives may not be restructured in a reorganisation plan.
Debt restructuring proceedings
If a trusted practitioner is appointed, a creditor cannot, by relying on a breach of a financial obligation that occurred before the insolvency petition was submitted, terminate a contract that has been entered into with the debtor or refuse to perform their obligations on those grounds. An agreement pursuant to which a creditor may terminate a contract when an insolvency petition is submitted or a restructuring plan is approved is null and void. If the continued performance of a contract is unfair in respect of the creditor and unnecessary from the point of view of the debtor, in particular if it is unlikely that debt restructuring proceedings will be opened or it is unnecessary to continue to perform the contract in order to conduct debt restructuring proceedings, the court may allow the creditor to terminate the contract on the basis of the creditor's petition.
Obligations arising from a continuing contract which are created or fall due after a debt restructuring petition is submitted can be restructured in debt restructuring proceedings. A restructuring plan may stipulate that a credit agreement or other continuing contract that has been entered into by a debtor before a debt restructuring petition is submitted and that imposes on the debtor financial obligations that fall due after the debt restructuring petition is submitted terminates when the restructuring plan is approved. The termination of a contract has the same consequences as the extraordinary cancellation of a contract due to circumstances arising from the debtor. The debtor's obligations arising as a result of the termination of a contract can be restructured beforehand under a restructuring plan. If obligations arising from a leasing contract are to be restructured, the lessor who is a creditor may extraordinarily cancel the contract within one week of the restructuring plan being approved.

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

After bankruptcy is declared, the creditors in the bankruptcy proceedings may only lodge their claims against the debtor in the bankruptcy proceedings. The trustee must be notified of all their claims against the debtor that had arisen before bankruptcy was declared, regardless of the grounds or the due dates for fulfilling the claims. Enforcement proceedings opened in respect of a debtor are closed if bankruptcy is declared, and the creditor must submit a claim to the trustee in bankruptcy.
In reorganisation proceedings and debt restructuring proceedings, new proceedings cannot be brought during the term of validity of the reorganisation plan and debt restructuring plan, respectively, only by those creditors whose claims the plan in question concerns. In the event of reorganisation, enforcement proceedings are suspended, except in the event of enforcement proceedings conducted to fulfil a claim that has arisen on the basis of an employment relationship. In debt restructuring proceedings, the court may suspend enforcement proceedings as a measure of provisional legal protection even before the adjudication or submission of an insolvency petition. When appointing a trusted practitioner, the court suspends enforcement proceedings (or compulsory enforcement) for the collection of money conducted with regard to the debtor's assets until bankruptcy is declared, the restructuring plan is approved or the proceedings are closed.

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

Bankruptcy proceedings

In disputes over the bankruptcy estate or assets that can be included in the bankruptcy estate, the right to be a party to court proceedings in lieu of the debtor is transferred to the trustee. If an action or any other petition relating to the bankruptcy estate filed by the debtor against another person is being heard in court proceedings that began before bankruptcy was declared or if the debtor participates in court proceedings as a third party, the trustee may, in accordance with their duties, enter the proceedings in lieu of the debtor. If the trustee does not enter such proceedings, the debtor may continue as the plaintiff, petitioner or third party.

If there is a proprietary claim against a debtor or an appeal against an administrative instrument issued to the debtor regarding a financial claim in public law in court proceedings which began before bankruptcy was declared, but no decision concerning the claim or appeal has yet been made, the court will refuse to hear the claim or appeal, except for deciding on imposition of a pecuniary punishment or confiscation or substitution thereof in criminal proceedings, a claim concerning a maintenance obligation in civil proceedings, or an appeal against a fine imposed for a misdemeanour. The court will reopen the proceedings on the basis of a petition from the plaintiff if a higher court has annulled the bankruptcy ruling and a ruling dismissing the bankruptcy or insolvency petition has entered into force or if the bankruptcy proceedings have come to an end by abatement after bankruptcy is declared.

If a claim for the exclusion of an object from the bankruptcy estate has been lodged against the debtor in court proceedings that began before bankruptcy was declared, the court will hear the claim. In this case, the trustee in bankruptcy may enter the proceedings in lieu of the debtor. The trustee has the rights and obligations of the debtor as the defendant. If the trustee does not enter the proceedings, the proceedings may be continued at the request of the plaintiff.

If there is a proprietary claim against a debtor or an appeal against an administrative instrument issued to the debtor regarding a financial claim in public law in court proceedings and the decision made in this matter is subject to appeal, an appeal may be filed by the trustee on behalf of the debtor after bankruptcy is declared. The debtor may file the appeal with the trustee's consent. The debtor may file an appeal against a pecuniary punishment or confiscation or substitution thereof in criminal proceedings, a claim for compensation for damage caused by a criminal offence or imposition of a fine in misdemeanour proceedings regardless of the trustee's consent. If an administrative instrument against a debtor has been challenged in the court, the term for challenging that administrative instrument is suspended.

A person who has a claim for maintenance against the debtor that has fallen due after the debtor was declared bankrupt is not a creditor in the bankruptcy proceedings in respect of this claim and this claim cannot be lodged in the bankruptcy proceedings. This claim may be lodged with the court and court proceedings can be conducted during the bankruptcy proceedings.

Reorganisation proceedings and debt restructuring proceedings

After a reorganisation petition is submitted, the court hearing the matter may, on the basis of a petition from an undertaking and with the approval of the reorganisation adviser, which is appended to the petition, suspend court proceedings involving a financial claim against the undertaking until the reorganisation plan is approved or the reorganisation proceedings are closed, except in the event of a claim lodged on the basis of an employment relationship or a claim for the payment of maintenance support regarding which no judgment has yet been made. When admitting an insolvency petition of a natural person, the court will appoint a trusted practitioner, after which the court may suspend court proceedings involving a financial claim against the debtor regarding which no judgment has yet been made. The court may suspend the proceedings until bankruptcy is declared, the debt restructuring plan is approved or the proceedings are closed.

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

Participation of creditors in bankruptcy proceedings

A creditor represents their claim in the bankruptcy proceedings. Creditors are required to notify the trustee of all their claims against the debtor that had arisen before bankruptcy was declared, regardless of the grounds or due dates for fulfilling the claims, no later than within two months of the date of publication of the bankruptcy notice in *Ametlikud Teadaanded*. The trustee is to be notified of a claim by a written petition (proof of claim). Claims are defended in writing. After all creditors have notified the trustee of their claims, the trustee will prepare a preliminary list of creditors. The list is presented to the creditors for examination. The creditors and the debtor have an opportunity to file objections to the claims of all creditors. If there is a reason therefor, the trustee must also file their objections. Thereafter, the creditors to whose claims objections were filed can express their opinions to the trustee. The trustee prepares a final list of creditors on the basis of the claims, objections and opinions expressed thereon and submits it to the court for approval. Rights of security are defended together with the claims that they secure. A claim, its ranking and the right of security securing the claim are deemed to have been admitted if neither the trustee nor any of the creditors object thereto at the meeting for the defence of claims and the court approves the list of creditors. A claim which has been admitted or its ranking cannot be challenged subsequently.

In addition to the fact that each creditor represents their claim and the defence thereof, creditors also participate in the conduct of bankruptcy proceedings through the general meeting of creditors. A general meeting of creditors is competent to approve the trustee and elect the bankruptcy committee, decide on the continuation or dissolution of the debtor's enterprise, decide on the debtor's dissolution if the debtor is a legal person, make a composition, decide to the extent provided for by law on issues relating to the sale of the bankruptcy estate, resolve complaints filed against the trustee's activities, decide on the remuneration of the members of the bankruptcy committee and resolve other issues that are within the competence of the general meeting of creditors pursuant to law. If a general meeting of creditors decides to elect a bankruptcy committee, it is the duty of the latter, among other things, to protect the interests of all creditors in the bankruptcy proceedings.

Participation of creditors in reorganisation proceedings

The reorganisation adviser immediately notifies creditors of the opening of reorganisation proceedings and of the size of the claims that they have against the undertaking according to the list of debts. To this end, the adviser submits a reorganisation notice to the creditors. If a creditor whose claim is sought to be restructured under a reorganisation plan does not agree with the information in the reorganisation notice, the creditor will submit to the reorganisation adviser, within the term set in the reorganisation notice, a written petition that sets out in which respect they do not agree with the claim in the reorganisation notice and submit evidence in proof of these circumstances. If the petition is not submitted by the due date, the creditor is deemed to have agreed with the size of the claim. The reorganisation adviser verifies whether the claim of the creditor who did not agree with the claim is lawful and assesses whether the claim to be restructured is proven, and informs the court of any claim which does not actually exist, the size of which is unclear or in the case of which it cannot be assessed whether the claim is lawful or proven. If the reorganisation adviser does not agree with an allegation made in the creditor's petition, they will submit the petition together with evidence promptly to the court and substantiate why they disagree with the information in the petition. The reorganisation adviser will justify their allegations. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence and scope of the security.

Participation of creditors in debt restructuring proceedings

Debt restructuring proceedings concern the creditors whose claims against the debtor have fallen due by the time an insolvency petition is submitted. In addition, obligations arising from a continuing contract which are created or fall due after an insolvency petition is submitted can be restructured under certain conditions.

After the restructuring plan has been prepared and before it is submitted to the court, the trusted practitioner promptly delivers it with the petition, the list of the debtor's assets and debts and other annexes to the creditors specified in the restructuring plan whose claims are requested to be restructured. When

delivering a restructuring plan, the trusted practitioner grants the creditor a term of at least two weeks, but no more than four weeks, after receipt of the restructuring plan to express an opinion to the trusted practitioner. The creditor will express an opinion on whether the creditor agrees with the debtor's information regarding the claim and the security, the debtor's calculation of the debt and the restructuring of the debt in the manner requested by the debtor. If the creditor does not agree with the restructuring of the debt in the manner requested by the debtor, the creditor must indicate whether they would agree with the restructuring of the debt in another manner. The trusted practitioner also refers to the consequences of failure to express an opinion. The trusted practitioner sends the opinions of the creditors with the restructuring plan to the court.

If the creditor whose claim is sought to be restructured does not agree with the size of the claim and other information given in the list of debts, the creditor will, within the set term, submit to the trusted practitioner a petition in which they set out the circumstances with which they do not agree in the list of debts and submit evidence for their objections. If no petition is submitted by the due date, the creditor is deemed to have agreed with the size of the claim. If the trusted practitioner does not agree with an objection made in the creditor's petition, they will submit, together with the restructuring plan, the petition with evidence to the court and substantiate why they disagree with the information in the petition. Together with the restructuring plan, the trusted practitioner also submits to the court the opinions, petitions and evidence submitted by the creditors. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence of security when approving the plan. Where necessary, the court will hear the debtor and the affected creditor beforehand. The court may refuse to determine the size of the creditor's claim or to determine it only in part, where the claim that is sought to be restructured does not actually exist in the opinion of the court, its size is unclear or it is not possible to assess reasonably whether the claim is lawful or proven. After a restructuring plan has been approved, the legal consequences prescribed therein start to apply to the debtor and the person whose rights are affected by the restructuring plan.

Participation of creditors in proceedings for release from obligations

If proceedings for release from obligations are opened, this is done at the same time as declaring bankruptcy. As long as bankruptcy proceedings continue, the creditors participate in the proceedings in accordance with the provisions on bankruptcy proceedings. If bankruptcy proceedings are closed and proceedings for release from obligations continue thereafter, creditors who lodged their claims in the bankruptcy proceedings and whose claim or part of their claim has not been satisfied have the right to receive payments during the period of release from obligations.

During proceedings to release a debtor from their obligations, the creditors in the bankruptcy proceedings, including the creditors in the bankruptcy proceedings who have not lodged their claims during the bankruptcy proceedings, cannot make any claims for payment on the debtor's assets. Creditors whose claims against the debtor have arisen after bankruptcy has been declared cannot, during the proceedings to release the debtor from their obligations, make any claims for payment on the amounts of money which are to be transferred to the trusted practitioner.

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

The debtor's assets become the bankruptcy estate on the basis of a bankruptcy ruling and are used as assets designated for satisfying creditors' claims and conducting bankruptcy proceedings. The bankruptcy estate means the debtor's assets at the time of the declaration of bankruptcy, as well as assets reclaimed or recovered and assets acquired by the debtor during the bankruptcy proceedings. The debtor's assets on which, pursuant to law, no claim for payment may be made are not included in the bankruptcy estate.

When bankruptcy is declared, the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy. After bankruptcy is declared, any dispositions by the debtor with regard to objects forming part of the bankruptcy estate are null and void. Before bankruptcy is declared, the court may prohibit a debtor from disposing of assets or a share of the assets without the consent of the interim trustee.

The trustee must take possession of the debtor's assets and start the administration of the bankruptcy estate without delay after a bankruptcy ruling is issued. The trustee must reclaim the debtor's assets that are in the possession of a third party for the bankruptcy estate, unless otherwise provided for by law. Administration of a bankruptcy estate comprises the performance of acts with the bankruptcy estate that are necessary for the preservation of the bankruptcy estate and conduct of the bankruptcy proceedings, as well as management of the debtor's activities if the debtor is a legal person or organisation of the debtor's business activities if the debtor is self-employed. In the bankruptcy proceedings of a debtor who is a legal person, the trustee has such rights and obligations of the management board or of the body substituting for the management board of the legal person that are not contrary to the aim of the bankruptcy proceedings. The liability of the trustee is equal to the liability of a member of a management body.

A trustee may conclude a transaction with bankruptcy estate in cash only with the permission of the court. The trustee will not make any payments to creditors in cash on the basis of the distribution ratio. The trustee may conclude transactions of particular relevance to the bankruptcy proceedings only with the consent of the bankruptcy committee. Transactions of particular relevance are, above all, borrowing and, in the event of an enterprise that is included in the bankruptcy estate, all the transactions that are beyond the scope of the regular business activities of the enterprise. The trustee may not conclude any transactions with themselves or with persons related to them in respect of or on the account of the bankruptcy estate or conclude any other transactions of similar nature or involving a conflict of interests or request compensation for the expenses incurred in such transactions.

A trustee may start the sale of the bankruptcy estate after the first general meeting of creditors, unless the creditors have decided otherwise at the meeting. If the debtor has appealed against the bankruptcy ruling, the debtor's assets may not be sold without the debtor's consent before the appeal filed with the district court is heard. These restrictions do not apply to the sale of assets that are highly perishable, depreciate rapidly in value or are excessively expensive to store or preserve. If the activities of the debtor's enterprise continue, the assets may not be sold if this hinders the activities of the enterprise from continuing. If a proposal for composition is submitted, assets may not be sold before the composition is made, unless the general meeting of creditors decides that they may be sold, regardless of the proposal for composition. Bankruptcy estate is sold by auction pursuant to the procedure provided for in the Code of Enforcement Procedure.

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?

Claims to be lodged against the debtor's bankruptcy estate

All claims that arose against the debtor before bankruptcy was declared are to be lodged against the debtor's bankruptcy estate, regardless of the grounds or due dates for fulfilling the claims. When bankruptcy is declared, all the creditors' claims against the debtor are deemed to have fallen due, unless otherwise provided for by law. If a creditor has filed a corresponding claim with the court but no judicial decision has yet been made, the court will suspend the proceedings concerning the action and the creditor must lodge the claim with the trustee in bankruptcy. If a creditor has filed a claim with the court and the court has issued a judgment that has entered into force, the creditor must also lodge their claim with the trustee in bankruptcy, but such a claim is deemed to have been defended. If the debtor could have contested the judicial decision, the trustee in bankruptcy may do that.

Handling of claims arising after the opening of bankruptcy proceedings

After bankruptcy is declared, the creditors in the bankruptcy proceedings may only lodge their claims against the debtor in accordance with the procedure provided for in the Bankruptcy Act. Claims can only be lodged with the trustee in bankruptcy and only those claims can be lodged that had arisen before bankruptcy was declared. Claims arising after bankruptcy is declared cannot be lodged before the closure of the bankruptcy proceedings. Account must be taken of the fact that, in the case of legal persons, in most cases the closure of bankruptcy proceedings involves the liquidation of the legal person, and as a result there is no person against whom claims can be lodged after the bankruptcy proceedings. Thus, it is necessary to be careful and take that risk into

account when concluding transactions with a legal person who is bankrupt. Claims against a natural person arising during bankruptcy proceedings can be lodged after the bankruptcy proceedings pursuant to the general procedure, but this is subject to certain restrictions if proceedings to release a debtor who is a natural person from their obligations are also being conducted. Obligations to compensate for damage caused during bankruptcy proceedings by the unlawful action of a debtor who is a legal person are consolidated obligations, and so the debtor may be required to perform them during the bankruptcy proceedings pursuant to the general procedure. Enforcement proceedings may also be conducted with regard to the bankruptcy estate for the obligations to be performed.

It is also possible for a situation to arise where there is a disposition by the debtor after bankruptcy is declared with regard to an object belonging to the bankruptcy estate. Such a disposition is null and void since, when bankruptcy was declared, the right to administer and dispose of the assets transferred to the trustee in bankruptcy. If there is nonetheless a disposition by the debtor, the assets transferred by the other party on the basis of the disposition are returned to the party if the assets have been retained in the bankruptcy estate, or compensation is provided if the bankruptcy estate has increased as a result of the transfer. If the debtor disposed of the object on the day bankruptcy was declared, it is presumed that the disposition took place after bankruptcy was declared. If the debtor has disposed of their future claims before bankruptcy is declared, the disposition will become null and void when bankruptcy is declared in respect of the claims that have arisen after bankruptcy is declared. A debtor who is a natural person may dispose of the bankruptcy estate with the trustee's consent. Any dispositions without the trustee's consent are null and void.

Handling of claims arising after the opening of reorganisation proceedings and debt restructuring proceedings

During the term of validity of a reorganisation plan, no statement of claim can be filed on the basis of a claim to which the reorganisation plan applies. Statements of claim may be filed about other claims. During the term of validity of a restructuring plan, no statement of claim or petition in proceedings on petition may be filed on the basis of a claim to which the restructuring plan applies. Statements of claim may be filed about other claims. Approval of a restructuring plan does not limit the creditor's right to challenge in court proceedings the claims not admitted in the restructuring plan. A creditor may also challenge in court proceedings the size of the claim to the extent of the share not accepted.

The submission of a debtor's reorganisation petition or debt restructuring petition suspends the limitation period in respect of claims against the debtor. After a reorganisation petition is submitted, the court hearing the matter may, on the basis of a petition from an undertaking and with the approval of the reorganisation adviser, which is appended to the petition, suspend court proceedings involving a financial claim against the undertaking until the reorganisation plan is approved or the reorganisation proceedings are closed, except in the event of a claim lodged on the basis of an employment relationship regarding which no judgment has yet been made. When admitting a debt restructuring petition, the court will suspend court proceedings involving a financial claim against the debtor regarding which no judgment has yet been made until the restructuring plan is approved or the proceedings are closed.

A reorganisation plan does not release a person who is jointly and severally liable for the performance of an obligation of an undertaking from performance of that person's obligation. Approval of a restructuring plan does not release a person who is jointly and severally liable for performance of the debtor's obligation from performance of that person's obligation.

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

Rules governing the lodging, verification and admission of claims in bankruptcy proceedings

Creditors are required to notify the trustee of all their claims against the debtor that had arisen before bankruptcy was declared, regardless of the grounds or due dates for fulfilling the claims, no later than within two months of the date of publication of the bankruptcy notice in *Ametlikud Teadaanded*. When bankruptcy is declared, all the creditors' claims against the debtor are deemed to have fallen due. The trustee is to be notified of a claim by a written petition (proof of claim). The proof of claim sets out the content, basis and size of the claim and whether the claim is secured by a pledge. Documents proving the circumstances referred to in the proof of claim are appended thereto.

Claims are defended in written proceedings. Rights of security are defended together with the claims that they secure. The trustee prepares a preliminary list of creditors on the basis of the proofs of claim submitted. All creditors and the debtor can file objections to the creditors' claims. The trustee must also file objections where necessary. Then, the creditors who received an objection are given an opportunity to express their opinion on the objection. The trustee prepares a final list of creditors on the basis of the proofs of claim, objections and opinions submitted and submits it to the court for approval.

When approving the list of creditors, the court adjudicates on the merits of the submitted objections, opinions, requests and petitions enclosed with the list, determines the sizes, rankings and distribution ratios of claims, and approves the list of creditors by a court ruling. A claim, its ranking and the right of security securing the claim are deemed to have been admitted if neither the trustee nor any of the creditors object thereto or if the trustee or the creditor who filed an objection waives the objection. To waive an objection, a petition must be submitted to the court.

The following are deemed admitted without defence:

1) claims satisfied by a judicial decision which has entered into force or by a decision of an arbitral tribunal which is an enforcement instrument pursuant to Section 2(1)(6) or (61) of the Code of Enforcement Procedure;

2) rights of security admitted by a judicial decision which has entered into force or by a decision of an arbitral tribunal which is an enforcement instrument pursuant to Section 2(1)(6) or (61) of the Code of Enforcement Procedure or rights of security entered in the land register, ship register, commercial pledge register or securities register;

3) claims satisfied by decisions and orders of the Unified Patent Court which have entered into force and are specified in Article 82 of the Agreement on a Unified Patent Court (OJ C 175, 20.6.2013, p. 1);

4) claims satisfied by decisions of courts of foreign states, which are declared enforceable or subject to enforcement without recognition in Estonia;

5) claims for performance of financial obligations in public law arising from an administrative instrument referred to in Section 2(1) of the Code of Enforcement Procedure if the term for contesting the administrative instrument has expired before bankruptcy is declared, and also in the event that such claims arise from an official document of a foreign state which is declared enforceable or subject to enforcement without recognition in Estonia.

A list of creditors to be approved by a court ruling sets out:

1) the name of the creditor;

2) the registry code or personal identification code of the creditor;

3) the size of the admitted claim of the creditor;

4) the ranking of the admitted claim and the distribution ratio;

5) whether the claim is secured by a right of security;

6) whether the claim is a solidary obligation or a claim arising from a conditional transaction or administrative instrument with a secondary condition;

7) whether the claim is subject to an objection by the debtor.

Rules governing the lodging, verification and admission of claims in reorganisation proceedings and debt restructuring proceedings

In reorganisation proceedings, the debtor submits a list of debts in which they set out all the claims against them as well as the corresponding creditors. Thus, creditors themselves do not lodge any claims. A creditor whose claim is sought to be restructured under a reorganisation plan and who does not agree with the size of their claim in the reorganisation proceedings may submit to the reorganisation adviser a written petition that sets out in which respect they do

not agree with the claim in the reorganisation notice, and submits the evidence in proof of these circumstances. If the petition is not submitted by the due date, the creditor is deemed to have agreed with the size of the claim. The debtor may object to the arguments put forward by the creditor, but the debtor must substantiate their positions. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence and scope of the security.

In debt restructuring proceedings, the debtor provides an overview of their debts in a petition and the trusted practitioner prepares a detailed list of debts. A debt restructuring plan indicates the obligations to be restructured and the manner of restructuring requested by the debtor. Similarly to reorganisation proceedings, creditors themselves do not lodge any claims. If a creditor whose claim is sought to be restructured does not agree with the information given by the debtor in the list of debts, the creditor will notify the court or, if so determined by the court, the adviser within the term set by the court in which respect they do not agree with the claim and submit the evidence in proof of these circumstances. If the petition is not submitted by the due date, the creditor is deemed to have agreed with the size of the claim. If the debtor or trusted practitioner does not agree with an allegation made in the creditor's petition, they will submit the petition together with evidence to the court and substantiate why they disagree with the information in the petition. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence of the security.

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

The applicable principle is that all creditors are treated equally. Nevertheless, certain exceptions apply that provide some creditors with a preferential right. Before money is paid on the basis of distribution ratios, payments relating to bankruptcy proceedings are made out of the bankruptcy estate in the following order:

1) claims arising from the consequences of exclusion or recovery of assets;
2) maintenance support payable to the debtor and their dependants;
3) in the bankruptcy proceedings regarding an estate, the expenses referred to in Section 142(1)(1) of the Law of Succession Act;
4) consolidated obligations;
5) costs and expenses incurred in the bankruptcy proceedings.

After these payments have been made, the creditors' claims are satisfied in the following order:

1) admitted claims secured by a pledge;
2) other admitted claims that were lodged within the term set;
3) other claims that were not lodged within the term set, but that were admitted;
4) in the bankruptcy proceedings regarding an estate, the claims referred to in Section 142(1)(3) of the Law of Succession Act and the claims for compulsory portions.

If a contract prescribes that the creditor's claim is to be satisfied in a lower ranking than that indicated above, the claim will be satisfied in the ranking prescribed in the contract. This means it is possible to take account of voluntary subordination of obligations.

Third party liability for the debtor's obligations is possible in the case of solidary debtors. In this case, the solidary debtor is liable to the creditor, regardless of the debtor's insolvency. If a solidary debtor pays the share of the debt that the creditor has also lodged against the debtor, that share will be deducted from the claim.

It is also possible for the debtor's obligation to transfer to a third party on the basis of law. If the employer has become insolvent, i.e. the employer has been declared bankrupt or the bankruptcy proceedings have ended in abatement, the employee will be compensated for any remuneration not received before the employer was declared insolvent, any holiday pay not received before the employer was declared insolvent and any benefits not received when the employment contract was cancelled before or after the employer was declared insolvent. If an employer is insolvent, the creditor in bankruptcy proceedings in respect of the unemployment insurance premiums not received by the due date is the state.

In reorganisation proceedings and debt restructuring proceedings, it is not possible to talk about bankruptcy estate, and claims are satisfied according to the reorganisation or debt restructuring plan. A reorganisation plan does not release a person who is jointly and severally liable for the performance of an obligation of an undertaking from performance of that person's obligation. If the person who is jointly and severally liable for the performance of an obligation of an undertaking has performed the obligation, the person will only have the right of recourse against the undertaking to the extent to which the undertaking is liable for the performance of the obligation under the reorganisation plan. Approval of a restructuring plan does not release a person who is jointly and severally liable for performance of the debtor's obligation from performance of that person's obligation. If the person who is jointly and severally liable for the performance of the debtor's obligation has performed the obligation, the person will only have the right of recourse against the debtor to the extent to which the debtor is liable for the performance of the obligation under the restructuring plan.

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

Closure of bankruptcy proceedings and effects of closure

Proceedings in respect of a bankruptcy petition may be closed before bankruptcy is declared. After hearing the bankruptcy petition, the court declares bankruptcy, dismisses the petition or closes the proceedings by abatement.

The court will close proceedings by abatement by a ruling without declaring bankruptcy, regardless of the debtor's insolvency, if the debtor's assets are insufficient to cover the costs and expenses incurred in the bankruptcy proceedings and if it is impossible to recover or reclaim the assets or submit a claim against a member of a management body. The court may also close proceedings by abatement without declaring bankruptcy, regardless of the debtor's insolvency, if the debtor's assets consist primarily in claims for recovery or claims against third parties and the satisfaction of these claims is unlikely. The court will not close proceedings by abatement if the debtor, a creditor or a third party transfers the amount determined by the court as a deposit to cover the costs and expenses incurred in the bankruptcy proceedings to the account prescribed to this end or if the court grants the petition of the Insolvency Division to conduct bankruptcy proceedings in respect of a debtor who is a legal person as a public investigation. If the bankruptcy proceedings of a debtor who is a legal person end in abatement, the interim trustee will liquidate the legal person within two months of the entry into force of the ruling on the closure of the proceedings without liquidation proceedings. If, on the abatement of bankruptcy proceedings, the debtor has any assets, the interim trustee's remuneration will be paid and necessary expenses covered first.

Bankruptcy proceedings end with the abatement of the bankruptcy proceedings, after the grounds for bankruptcy have ceased to exist, with the creditors' consent, when the final report is approved, when a composition is approved or on other grounds provided for by law.

The court will close bankruptcy proceedings by abatement if the bankruptcy estate is insufficient to cover the consolidated obligations and the costs and expenses incurred in the bankruptcy proceedings. In the case of a debtor who is a legal person, the court makes a proposal to the Insolvency Division to file an application to conduct bankruptcy proceedings as a public investigation, granting a reasonable term for filing the application. If the application is granted, the proceedings will not be closed and they will continue as a public investigation.

The court will close bankruptcy proceedings on the basis of a petition from the debtor if the grounds for the bankruptcy proceedings have ceased to exist, provided that the debtor proves that they are not insolvent or that they are not likely to become insolvent if the bankruptcy was declared because the debtor was likely to become insolvent in the future. If bankruptcy proceedings are closed because the grounds for the bankruptcy proceedings have ceased to exist, the legal person is not dissolved.

The court will close bankruptcy proceedings on the basis of a petition from the debtor if all the creditors who lodged their claims within the term set have granted their consent to the closure of the proceedings. If a debtor who is a legal person is permanently insolvent, the court will decide on the liquidation of the debtor who is a legal person by a ruling on the closure of the proceedings.

Bankruptcy proceedings end by approval of a final report, when the trustee submits the final report to the bankruptcy committee and the court. In the final report, the trustee provides information concerning the bankruptcy estate and the money received from its sale, payments, claims admitted by creditors, actions filed and not yet filed, etc. Creditors may file objections to the final report with the court. The court decides on the approval of the final report and closure of the bankruptcy proceedings. The court will refuse to approve the final report and, by means of a ruling, will return it to the trustee for the bankruptcy proceedings to continue if the final report reveals that the rights of the debtor or the creditors have been breached in the bankruptcy proceedings.

Bankruptcy proceedings may also end with a composition being declared. Composition is an agreement between a debtor and the creditors concerning the payment of debts and it involves reduction of the debts or extension of the term for payment. A composition is made in bankruptcy proceedings on the proposal of the debtor or the trustee after bankruptcy is declared. A composition resolution is adopted by the general meeting of creditors. The court will decide on the approval of the composition. The court will close the bankruptcy proceedings by means of a ruling approving the composition.

If bankruptcy proceedings are not closed within two years of bankruptcy being declared, the trustee will submit a report to the bankruptcy committee and the court once every six months until the closure of the bankruptcy proceedings. In that report the trustee will set out the reasons why the bankruptcy proceedings have not been completed and provide information concerning the sold and unsold bankruptcy estate and concerning the administration of the bankruptcy estate. The court will release the trustee when the bankruptcy proceedings are closed, unless otherwise provided for by law. The court may refuse to release the trustee if, by the time the bankruptcy proceedings are closed, the bankruptcy estate has not been sold in full, money is still to be received for the bankruptcy estate, the actions filed by the trustee have not been heard, or the trustee intends or is required to file an action. In this case, the trustee will also continue to perform their duties after the bankruptcy proceedings are closed. If, after the end of the bankruptcy proceedings and the release of the trustee, money is received in the bankruptcy estate, amounts of money deposited on distribution become available or it becomes evident that the bankruptcy estate includes objects that were not taken into account when the bankruptcy proceedings were conducted, the court will make a ruling on subsequent distribution on its own initiative or on the basis of a petition from the trustee or a creditor.

Closure of reorganisation proceedings and effects of closure

Reorganisation proceedings end if they are closed before the due date, the reorganisation plan is annulled, the reorganisation plan is implemented before the due date, or the term for implementing the reorganisation plan as set out in the reorganisation plan expires. Where a reorganisation plan is implemented before the due date, the reorganisation proceedings end if the undertaking has performed all the obligations they assumed under the reorganisation plan before the term for implementing the reorganisation plan expires.

Reorganisation proceedings may be closed before the due date only before the reorganisation plan is approved. The court will close reorganisation proceedings before the due date if the undertaking breaches its obligation to cooperate or fails to pay the amount set by the court as a deposit to cover the reorganisation adviser’s or expert’s remuneration and expenses, the reorganisation plan is not approved, the undertaking submits a petition to this effect, the grounds for opening the reorganisation proceedings cease to exist, the assets of the undertaking are squandered or the creditors’ interests are damaged, the reorganisation plan is not submitted by the due date, or the undertaking has submitted incorrect information about the claims. If the court closes reorganisation proceedings before the due date, any and all of the consequences of opening the reorganisation proceedings retroactively cease to exist. When the term for implementing a reorganisation plan expires, the reorganisation proceedings will be closed.

Reorganisation proceedings may also end in the annulment of the reorganisation plan. A reorganisation plan is annulled if the undertaking has been convicted of a bankruptcy offence or a criminal offence relating to enforcement proceedings after the reorganisation plan was approved, the undertaking fails to perform its obligations under the reorganisation plan to a material extent, if it is evident, when at least one-half of the term of validity of the reorganisation plan has passed, that the undertaking is unable to perform the obligations it assumed under the reorganisation plan, on the basis of a petition from the reorganisation adviser if the fee for supervision is not paid or if the undertaking fails to provide assistance to the reorganisation adviser during performance of the supervision obligation or does not provide information to the reorganisation adviser that the latter requires to exercise supervision, if the undertaking submits a petition for the annulment of the reorganisation plan, or if the undertaking is declared bankrupt. If a reorganisation plan is annulled, the consequences of opening the reorganisation proceedings retroactively cease to exist. The consequences of opening reorganisation proceedings also include extension of the terms for recovery prescribed in any possible subsequent bankruptcy or enforcement proceedings. This consequence does not cease to exist.

Closure of debt restructuring proceedings and effects of closure

Debt restructuring proceedings end when the debt restructuring plan is annulled, the proceedings are closed or the term for implementation as set out in the debt restructuring plan expires. When a restructuring plan is implemented before the due date, the proceedings end if the debtor has performed all the obligations assumed under the restructuring plan before the term for implementing the restructuring plan expired.

The court will annul a restructuring plan on the basis of a petition from the debtor and if the debtor is declared bankrupt. The court may annul a restructuring plan if the debtor fails to perform the obligations under the restructuring plan to a material extent, if it is evident, when at least one-half of the term of validity of the restructuring plan has passed, that the debtor is unable to perform the obligations assumed thereunder, the debtor does not have any solvency problems or has overcome them, the debtor has, intentionally or due to gross negligence, submitted materially incorrect or incomplete information about their assets, income, creditors or obligations, the debtor has made payments to creditors not referred to in the restructuring plan, thereby damaging the other creditors’ interests to a material extent, the debtor fails to provide assistance to the court or the adviser during performance of the supervision obligation or does not provide the information required for supervision to be exercised, or if the debtor fails to pay the amount determined by the court as a deposit to cover the trusted practitioner’s or expert’s remuneration and expenses. If a restructuring plan is annulled, the consequences of admitting the debt restructuring petition retroactively cease to exist. The consequences of opening restructuring proceedings also include extension of the terms for recovery prescribed in any possible subsequent bankruptcy or enforcement proceedings. This consequence does not cease to exist.

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

Creditors’ rights after the closure of bankruptcy proceedings

After the closure of bankruptcy proceedings, claims that could have been, but were not, lodged during the bankruptcy proceedings and claims that were filed, but were not satisfied, or against which the debtor filed an objection may be lodged by the creditors against the debtor pursuant to the general procedure. In this case, interest and default interest will not be calculated for the period of the bankruptcy proceedings.

If a debtor who is a natural person is released from their obligations that were not performed during the bankruptcy proceedings, the claims of the creditors in the bankruptcy proceedings against the debtor, including the claims of the creditors in the bankruptcy proceedings who did not lodge their claims during the bankruptcy proceedings, except for obligations to compensate for damage caused intentionally by unlawful action or to pay maintenance support for a child or parent, extinguish.

After the closure of bankruptcy proceedings, creditors may also lodge claims arising from consolidated obligations that were not satisfied in the bankruptcy proceedings against the debtor. Claims arising during bankruptcy proceedings that could not be lodged in the bankruptcy proceedings may also be lodged against the debtor pursuant to the general procedure. In this case, the limitation period starts from the closure of the bankruptcy proceedings. To the extent that a creditor's claim admitted in bankruptcy proceedings was not satisfied in the bankruptcy proceedings, the ruling is the enforcement instrument unless the debtor has filed an objection to the claim or the court has admitted the creditor's claim.

Creditors' rights after the closure of reorganisation proceedings

If reorganisation proceedings are closed when the term for implementing a reorganisation plan expires, a creditor can enforce a claim restructured under the reorganisation plan only to the extent agreed on in the reorganisation plan but not fulfilled in accordance with the reorganisation plan.

If a reorganisation plan is annulled or terminated prematurely, the consequences of opening the reorganisation proceedings retroactively cease to exist. The right of claim of a creditor whose claim was restructured under the reorganisation plan is restored against the undertaking in the initial amount. Account must also be taken of the creditor's gains in the course of implementing the reorganisation plan.

Creditors' rights after the closure of debt restructuring proceedings

After the term for implementing a restructuring plan expires, a creditor can enforce a claim restructured under the plan only to the extent agreed on in the plan but not fulfilled. If the plan is annulled, the right of claim of the creditor whose claim was restructured under the restructuring plan is restored against the debtor in the initial amount. Account must also be taken of the creditor's gains in the course of implementing the restructuring plan.

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

Bankruptcy proceedings

If a bankruptcy petition is satisfied or the bankruptcy proceedings end in a composition, the costs and expenses incurred in the bankruptcy proceedings are paid out of the bankruptcy estate. If the court dismisses or rejects a creditor's bankruptcy petition or if the proceedings are closed because the creditor withdraws the bankruptcy petition, the costs and expenses incurred in the bankruptcy proceedings are reimbursed by the creditor. In the event of abatement of bankruptcy proceedings, the court will decide on the division of the costs and expenses incurred in the bankruptcy proceedings according to the circumstances.

If proceedings opened on the basis of the debtor's petition are closed by abatement without bankruptcy being declared and the debtor's assets are insufficient to make the required payments, the court will order the debtor to pay the interim trustee's remuneration and expenses subject to reimbursement, but may order them to be reimbursed from state funds. Any reimbursement of the interim trustee's remuneration and expenses from state funds will not exceed one minimum monthly salary (including the taxes prescribed by law, except value added tax). The court will not order the interim trustee's remuneration and expenses to be reimbursed from state funds if the debtor, a creditor or a third party has transferred the amount determined by the court as a deposit to cover the interim trustee's remuneration and expenses subject to reimbursement to the account prescribed to this end.

In the case of an insolvency petition filed by or against a debtor who is a natural person, a similar procedure applies. Instead of an interim trustee, a trusted practitioner is appointed for the natural person.

Reorganisation proceedings

If reorganisation proceedings are opened, the court will set a term during which the undertaking must transfer the amount determined by the court as a deposit to cover the reorganisation adviser's initial remuneration and initial expenses to the account prescribed to this end. If the undertaking fails to pay this amount, the court will close the reorganisation proceedings. The amount of the reorganisation adviser's remuneration and expenses to be reimbursed will be decided by the court when the reorganisation adviser is released or the reorganisation plan is approved on the basis of the report on the reorganisation adviser's activities and expenses.

If the court involves experts in reorganisation proceedings, the experts have the right to be reimbursed for necessary and justified expenses incurred when performing their obligations and to receive remuneration for performing their duties. The amount of an expert's remuneration and expenses to be reimbursed will be decided by the court. When setting the expert's remuneration, the court may also hear the undertaking.

Debt restructuring proceedings

The debtor bears the costs and expenses incurred in debt restructuring proceedings. The creditors' procedural expenses are borne by the creditors themselves. The court may order the debtor to bear the creditors' procedural expenses if the debtor knowingly submitted an unfounded debt restructuring petition or caused procedural expenses to the creditors by otherwise knowingly submitting false information or knowingly submitting an unfounded petition or objection. If the debt restructuring plan is implemented, the debtor does not have to reimburse the expenses of the procedural aid granted by the state. If debt restructuring proceedings are opened, the court will determine the amount that the debtor must transfer as a deposit to cover the trusted practitioner's remuneration and expenses to the account prescribed to this end. If the court appoints an expert, it may also determine the amount that the debtor must transfer in advance to compensate the expert's remuneration and expenses.

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

Bankruptcy proceedings

When bankruptcy is declared, the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy. After bankruptcy is declared, any dispositions by the debtor with regard to objects forming part of the bankruptcy estate are null and void. A debtor who is a natural person may dispose of the bankruptcy estate with the trustee's consent. Any dispositions without the trustee's consent are null and void.

The court will revoke, by way of recovery procedure, any transaction or other act by the debtor that was concluded or performed before bankruptcy was declared and that damages the creditors' interests. If a transaction subject to recovery has been concluded or any other act subject to recovery has been performed during the period from the appointment of an interim trustee or trusted practitioner to the declaration of bankruptcy, the transaction or other act is deemed to have damaged the creditors' interests.

The debtor, a creditor or the trustee may request that the court revoke a resolution of the general meeting of creditors if the resolution is contrary to law or was made in violation of the procedure provided for by law or if the right to contest the resolution is directly prescribed by law. Revocation of a resolution of the general meeting of creditors may also be requested if the resolution damages the creditors' common interests.

If proceedings have been opened for the release of a debtor who is a natural person from their obligations, the court may, at a creditor's request, annul the ruling releasing the debtor from their obligations that were not performed during the bankruptcy proceedings within one year of issuing the ruling if it becomes evident that the debtor has intentionally breached their obligations during the proceedings for the release of the debtor from their obligations and has thereby materially hindered satisfaction of the creditors' claims.

If the debtor and creditors agree to enter into a composition after bankruptcy is declared, the court may annul the composition if the debtor fails to perform the obligations arising from the composition, is convicted of a bankruptcy offence or a criminal offence relating to enforcement proceedings or, when at least one-half of the term of validity of the composition has passed, it is evident that the debtor is unable to meet the conditions of the composition. The annulment of a composition affects all the creditors who participated in the composition and, thus, protects the general body of creditors.

Reorganisation proceedings

The court will annul a reorganisation plan if the undertaking has been convicted of a bankruptcy offence or a criminal offence relating to enforcement proceedings after the reorganisation plan was approved, the undertaking fails to perform its obligations under the reorganisation plan to a material extent, if it is evident, when at least one-half of the term of validity of the reorganisation plan has passed, that the undertaking is unable to perform the obligations assumed under the reorganisation plan, on the basis of a petition from the reorganisation adviser if the fee for supervision is not paid or if the undertaking fails to provide assistance to the reorganisation adviser during performance of the supervision obligation or does not provide information to the reorganisation adviser that the latter requires to exercise supervision, or on the basis of a petition from the undertaking, or if the undertaking is declared bankrupt. The right of claim of a creditor whose claim was restructured under the reorganisation plan is restored against the undertaking in the initial amount, and account must also be taken of the creditor's gains in the course of implementing the reorganisation plan.

Debt restructuring proceedings

The court will annul a restructuring plan on the basis of the debtor's petition or if the debtor is declared bankrupt, or if the debtor fails to perform their obligations under the restructuring plan to a material extent, if it is evident, when at least one-half of the term of validity of the restructuring plan has passed, that the debtor is unable to perform the obligations assumed thereunder, the debtor does not have any solvency problems or has overcome them and the restructuring of the creditors' claims is no longer fair for the creditors due to a material change in circumstances, if the debtor has, intentionally or due to gross negligence, submitted materially incorrect or incomplete information about their assets, income, creditors or obligations, the debtor has made payments to creditors not referred to in the restructuring plan, thereby damaging the other creditors' interests to a material extent, the debtor fails to provide assistance to the court or the adviser during performance of the supervision obligation or does not provide the information required for supervision to be exercised, or if the debtor fails to pay the amount determined by the court as a deposit. The right of claim of a creditor whose claim was restructured under the restructuring plan is restored against the debtor in the initial amount. Account must also be taken of the creditor's gains in the course of implementing the restructuring plan.

Last update: 22/02/2023

Insolvency/bankruptcy - Ireland

Personal Insolvency Law in Ireland is governed by the Bankruptcy Acts 1988 to 2015 and the Personal Insolvency Acts 2012 to 2021 (the PI Act). The PI Act provides three methods of debt resolution, and introduces amendments to bankruptcy legislation.

All personal insolvency proceedings, including bankruptcy, are administered by the Insolvency Service of Ireland (ISI), which is an independent statutory body established in 2013 operating under the aegis of the Department of Justice.

Personal insolvency proceedings, which are governed by the PI Act, comprise the following three arrangements:

Debt Relief Notice (DRN): for debts of up to €35,000 for people with virtually no assets and very low income.

Debt Settlement Arrangement (DSA): for the agreed settlement of unlimited unsecured debts over a period of up to five years (extendable to six years in certain circumstances).

Personal Insolvency Arrangement (PIA): for the agreed settlement or restructuring of secured debt of up to €3 million (which can be increased by creditor agreement) and unlimited unsecured debt over a period of up to six years (extendable to seven years in certain circumstances).

A DSA and a PIA both share a three stage process:

Stage 1: A **Protective Certificate (PC)** is issued by the relevant court, which on issue precludes certain named or "specified" creditors from taking or bringing action against the debtor, including bankruptcy petitions, to recover their debt. When granted by the relevant court, a PC will apply for 70 days, but can be extended for a further 40 days on certain grounds.[i]

Stage 2: This involves the negotiation by a Personal Insolvency Practitioner (PIP) or (someone requested to do so by the PIP in accordance with Part 3 of the Personal Insolvency Act 2012 on behalf of the debtor with their specified creditors and the approval of the proposal by way of a vote at a statutory creditors' meeting. Recent legislation has provided for, in the case of a PIA only, the opportunity for the debtor to seek a court review of their proposal where the creditors have rejected the PIA proposal at the creditors' meeting.[ii]

Stage 3: Implementation of Arrangements, including periodic distributions to creditors by the PIP and annual reviews by the PIP where appropriate.

A debtor may enter into a DRN, DSA or PIA only once.

Bankruptcy is an option for debtors who, due to their circumstances, do not meet the eligibility criteria for the abovementioned three debt solutions, or who have previously entered into one of the debt solutions but the arrangement with the creditors failed.

Where an individual has shown that their financial situation cannot be solved by an Insolvency Arrangement, and has a letter from a PIP to that effect, they may apply to the High Court to be made bankrupt. The individual must file an application for an Order of Adjudication (Bankruptcy Order) with the Examiner's Office of the High Court and pay an initial fee of €200. Applicants will be heard before the High Court; after an individual is declared bankrupt, they are obliged by law to co-operate with the Official Assignee in Bankruptcy and his office (the Bankruptcy Division of the ISI), who are responsible for administrating the bankruptcy estate.

As soon as a debtor is made bankrupt their unsecured debts are written off in full, however, all of their assets become the property of the Official Assignee in Bankruptcy, who is the High Court appointed administrator of the bankruptcy estate.

Bankruptcy proceedings may be brought in the following two circumstances:

By a Petitioning Creditor, who brings an application to the High Court in order to bankrupt an individual who owes them debts, proving that they are a creditor of the individual and that the individual has not made satisfactory attempts to settle their debts.

By the individual themselves, termed a Self-Adjudicating bankruptcy.

A bankrupt is automatically discharged from bankruptcy on the first anniversary of the date of adjudication, providing that they have not been subject to a Bankruptcy Extension Order (taken by the Official Assignee in cases of non-compliance).

The PI Act creates a profession regulated by the ISI, which falls into two categories:

1. Approved Intermediaries (AIs): a person or corporate body authorised by the ISI to support debtors who wish to make an application for a DRN.

2. Personal Insolvency Practitioners (PIPs): a person authorised by the ISI to act as liaison between the debtor and their creditor(s) for the purposes of securing a DSA or PIA. A PIP is legally obliged to act in compliance with the PI Act and associated regulations. A PIP may also request any person employed by them, in a common partnership with them, or having a common employer with them to perform certain functions of a PIP.[iii]

1 Who may insolvency proceedings be brought against?

In Ireland, individuals (including partnerships of individuals) initiate personal insolvency proceedings through the procedures set out in the PI Act. Creditors may initiate bankruptcy proceedings against a debtor, or a debtor may file for bankruptcy on their own initiative.

2 What are the conditions for opening insolvency proceedings?

Insolvency Proceedings

The primary condition for opening personal insolvency proceedings is that the debtor is insolvent, i.e. they are unable to meet their debts as they come due. The nature and extent of the debts and the debtor's income then determines which of the three arrangement types is appropriate.

In order to ensure that an individual who is subject to an Insolvency Arrangement can still maintain a reasonable standard of living, the ISI formulated guidelines (following an extensive consultation process) called the Reasonable Living Expenses (RLEs). These guidelines, as well as ensuring the sustainability of the Insolvency Arrangement, also help to safeguard the debtor's statutory right to a reasonable standard of living, ensuring a fair and transparent method for standardising day-to-day living costs for distressed debtors. A debtor's RLEs, based on the template set out by the ISI, are calculated by their AI or PIP when they are applying for their Insolvency Arrangement.

1. Debt Relief Notice (DRN)

To apply for a DRN, the debtor must:

Be unable to pay their debts in full as they fall due;

Have a net monthly disposable income of €60 or less after RLEs;

Have assets of €1,500 or less. Debtors are also allowed:

One item of jewellery not exceeding a value of €750;

One motor vehicle worth a value of €5,000 or less, and;

Household equipment or tools, provided that their combined value does not exceed €6,000;

Be domiciled in the Republic of Ireland or must have, within the past year, ordinarily resided or had a place of business within Ireland;

Have completed and signed a Prescribed Financial Statement (PFS) and made a Statutory Declaration that it is true and accurate.

Typical examples of debts included in DRNs are credit card debts, overdrafts, personal loans, Credit Union loans, utility bills, and store cards.

2. Debt Settlement Arrangement (DSA)

A debtor is eligible to seek a DSA if he or she:

Is unable to pay their debts in full as they fall due;

Has one or more unsecured creditors;

Is domiciled in Ireland or, within the past year, ordinarily resided or had a place of business within Ireland;

Has completed a Prescribed Financial Statement (PFS) and made a signed Statutory Declaration that the information provided is true and accurate;

Has obtained a statement from a PIP which confirms that the PIP is of the opinion that:

The information in the PFS is true and accurate;

The debtor is eligible to make a proposal for a DSA;

Having considered the debtor's PFS there is no likelihood of the debtor becoming solvent in the next 5 years;

If the debtor enters into a DSA there is a reasonable prospect they will become solvent within the next 5 years.

In addition to the debts listed for a DRN, the debts in a DSA may typically include loans and personal guarantees.

3. Personal Insolvency Arrangement (PIA)

A debtor is eligible to seek a PIA if he or she:

Is unable to pay their debts in full as they fall due;

Owes debts to at least one secured creditor who holds that security over Irish property or assets;

Has secured debts of less than €3m (if all the secured creditors consent, this limit may be increased);

Has co-operated under a mortgage arrears process (e.g. the Mortgage Arrears Resolution Process (MARP) governed by the Central Bank of Ireland) for a period of 6 months with the secured creditor in respect of the principal private residence and -

the result was that no alternative repayment arrangement was agreed, or;

the secured creditor confirmed it would not put in place such an arrangement, or

the debtor has entered into an alternative repayment arrangement and has endeavoured to comply with that arrangement, to which the PIP has provided confirmation;

Is domiciled in Ireland or has, within the past year, ordinarily resided or had a place of business within Ireland;

Has completed and signed a Prescribed Financial Statement (PFS) and made a Statutory Declaration that it is true and accurate;

Has obtained a statement from the PIP confirming that the PIP is of the opinion that:

The information in the PFS is true and accurate;

The debtor is eligible to make a proposal for a PIA;

Having considered the PFS, there is no likelihood of the debtor becoming solvent in the next 5 years;

If the debtor enters into a PIA, there is a reasonable prospect they will become solvent within the next 6 years.

In addition to the debts listed for a DRN and DSA, the debts typically included in a PIA will include principal private residence housing loans, investment property loans, buy-to-let mortgages/loans.

Bankruptcy

In Ireland, individuals have the right to apply for a Self-Adjudicating bankruptcy, i.e. they may bring an application to the High Court to have themselves declared bankrupt. The conditions for bringing such an application are:

The individual, or debtor, must be unable to pay their debts as they fall due;

The debtor's debts must exceed the value of their assets by €20,000 or more;

The debtor must have made a reasonable attempt to use either a DSA or PIA to settle their debts. This must be evidenced before the courts by reference to a letter from a PIP.

A creditor may also petition for bankruptcy proceedings. If the creditor is petitioning for bankruptcy, he/she/it must not have unreasonably refused to accept a proposal for a DSA or for a PIA.

An application for a bankruptcy order is by way of Petition, which obligates the applicant to submit various High Court prescribed documents and affidavits to the Examiners Office of the High Court. Once granted, the bankruptcy order takes effect from the actual time of the order itself; there is no retrospective effect back to the date of issuance of the petition for bankruptcy as there may be in some jurisdictions.
Until the bankruptcy adjudication order is made there is no specific remedy for a creditor under the Bankruptcy Act to appoint an interim administrator – Section 23 of the Bankruptcy Act allows a bankrupt to be arrested post adjudication if he/she is about to leave the jurisdiction with the intention of avoiding bankruptcy.
A debtor or creditor can object to a bankruptcy order by filing a High Court motion and affidavits setting out their grounds of objection.

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 general aim underpinning the PI Act is to protect, as far as is practicable, the debtor's Principal Private Residence and the relevant provisions of the legislation are structured with that in mind.

Assets under Insolvency Proceedings

In the case of a DSA or a PIA, the PIP does not usually take physical possession or ownership of the debtor's assets – rather the PIP takes control of a debtor's income stream over the term of the arrangement and satisfies creditor claims from this income stream based on the terms of the arrangement. The income stream available is after deduction of RLEs, rent or mortgage repayments and other payments for special circumstances, such as medical expenses. Secured loan payments are usually paid direct by the debtor to their creditor as per the terms of their arrangement. If an asset is to be sold within an Arrangement, it is usually sold by the Debtor directly.

Assets under Bankruptcy

Under Bankruptcy Legislation, all assets belonging to the bankrupt on the date of adjudication immediately vest in the Official Assignee (this means that the Official Assignee now owns all assets in the bankruptcy estate). For sake of clarity, these assets include:
Cash;
Accounts with financial institutions, including current, savings, investment accounts etc.;
All land and buildings, including those considered to be family homes;
Machinery, equipment, tools of the trade, furniture, household goods and appliances;
All vehicles;
Pensions (with some exceptions), investment products, stocks and shares;
Stock on hand of any business the bankrupt holds in their own name or as part of a partnership;
Debts owed to the bankrupt.
There are exceptions to the above:
Debtors may claim excepted personal assets of a value of up to €6000, and may apply to the High Court to have this limit increased;
Assets arising from infringement of personal rights are excluded from the bankruptcy as these are not entitlements that should vest in the administrator for creditors because they are personal to the individual;
Certain pension entitlements (refer to legislation for further clarification).
A bankrupt is under obligation to inform the Official Assignee if they are in receipt of any assets during their bankruptcy term, regardless of how they came into possession of these assets. Such assets vest in the Official Assignee, when claimed by him, and enter into the bankruptcy estate.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Insolvency Proceedings

A PIP, when engaged by a debtor, will act as a negotiator between the debtor and their creditors. PIPs are bound by legislation to act in the best interests of both the debtor and the creditor(s), therefore they are obliged to formulate the best possible arrangement for all parties concerned in an insolvency arrangement.
The role and functions of a PIP include:
Engaging with a debtor who is contemplating making a proposal for an insolvency arrangement;
Accepting the appointment to act as insolvency practitioner;
Reviewing the Prescribed Financial Statement (PFS) prepared by the debtor and providing advices to the debtor on options and their eligibility to make a proposal for a debt settlement or personal insolvency arrangement;
Satisfying themselves that the financial information provided to them by the debtor is accurate and complete;
Providing an opinion, based on the criteria set out in legislation, as to which type of insolvency arrangement (DSA or PIA) best suits the debtor's situation;
Providing information relating to the procedure chosen, the general effect of, and the likely costs of becoming a party to an insolvency arrangement;
Applying on behalf of the debtor for a Protective Certificate (PC);
Notifying all creditors of the PC, PIP appointment, enclosing a copy of the debtor's PFS;
Preparing a proposal to creditors and convening a statutory meeting of creditors to consider and vote upon the proposal;
Where a proposal is approved, notifying the ISI and all creditors of the outcome;
Once approved by court or on a court review, operating the terms of the arrangement including the collection of funds from the debtor and payment to creditors over the duration of the arrangement;
Monitoring the arrangement throughout its lifetime;
Carrying out a review of the arrangement on at least an annual basis.
In insolvency proceedings, the debtor's role is to participate honestly in the process, agree to the arrangement negotiated by their PIP and meet the required terms of the arrangement.

Bankruptcy

On adjudication in bankruptcy, all assets divest from the bankrupt and vest in the Official Assignee (OA) in Bankruptcy. The OA is an independent statutory officer whose role is to administer bankruptcy estates and manage the Bankruptcy Division of the ISI.
In Ireland, a private individual can be appointed as trustee in bankruptcy to replace the High Court Official Assignee in Bankruptcy (OA). In practice, such appointments are extremely rare. The Bankruptcy Act does not specify any qualifications for such appointments.
The debtor's powers in bankruptcy are limited to being able to apply to the High Court to challenge certain decisions of the OA. The debtor has an obligation to comply with requests made by the OAs office with regard to the administration of the bankruptcy estate.

5 Under which conditions may set-offs be invoked?

The PI Acts 2012 to 2021 and the Bankruptcy Acts 1988 to 2015 both allow for set-offs to be applied. It is set out that, when determining the value of an asset or an amount owed, any debt or credit balances (b) held with the same creditor may be set-off against the original amount (a). The remaining balance is thus considered to be the debt or asset, which can be owed to the arranging debtor or to their creditor(s).[iv]

If a debtor has savings in a Credit Union to which they also owe a debt, the Credit Union shall off-set these savings against the amount owed by the debtor.[v]

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

Insolvency Proceedings

A Protective certificate prevents a creditor from taking any action during the Protective Certificate period. The ultimate Arrangement will set out what has been agreed with regard to pre-existing contracts.

Bankruptcy

Bankruptcy does not affect a secured creditor's rights over their security, i.e. a secured creditor retains all of the rights that they held under the terms of their security prior to the bankruptcy – the only difference being that the OA is now the owner of the property, not the bankrupt.

The OA has a duty to realise (sell or dispose of) all assets in a bankruptcy estate in order to satisfy, the greatest extent, the liabilities of the estate. Therefore, all contract-based liability claims against the debtor become liabilities of the estate. The OA will, only in exceptional circumstances, continue with any service-based contracts to which the bankrupt is party.

If the OA continues a contract, he becomes personally liable with right of indemnity out of the estate funds.[vi]

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

Insolvency Proceedings

DSA or PIA: The initial step taken by a debtor seeking a DSA/PIA is to apply for a PC from the relevant court. This, if obtained, precludes certain named or specified creditors, who are the subject of the PC, from taking any actions against the debtor for recovery or enforcement of the specified debts. In effect, the creditor is precluded from:

Initiating any legal proceedings in relation to its debt;

Continuing any legal proceedings, including court orders/judgements etc., that were initiated prior to the granting of the PC, i.e. such legal proceedings are considered to be suspended for the duration of the PC;

Taking any step to recover or secure payment of their debt;

Contacting the debtor regarding their debt, unless requested to do so by the debtor;

Altering or terminating any agreement with the debtor, or;

Initiating bankruptcy proceedings against the debtor.

Once the debtor enters an arrangement, similar enforcement restrictions as set out immediately above will apply to creditors for the duration of the arrangement.

DRN: In the case of a DRN, once it has been granted by the relevant court, the same protections as listed above for a DSA/PIA apply for the duration of the DRN.

Bankruptcy

Secured and unsecured creditors are treated differently under bankruptcy. The only option open to a bankrupt's unsecured creditors for recovery of their debts is to make a claim in the bankruptcy for the amount they are owed. Unsecured creditors cannot bring legal proceedings against the bankrupt after the date of adjudication. This is a direct and automatic consequence of the bankruptcy order made by the High Court. The rights of secured creditors are not affected by bankruptcy proceedings.

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

Insolvency Proceedings

DSA, PIA, DRN:

See response to question 7.

Bankruptcy

As is the case with assets in a bankruptcy estate, the OA replaces the bankrupt as defendant in any existing lawsuits brought about by creditors against the bankrupt. The OA has the option to either defend, settle or abandon the proceedings. If the OA successfully defends the proceedings, any counterclaim or costs will be paid into the bankruptcy estate for the benefit of all creditors. If the proceedings are successful, or a settlement is reached, the agreed amount becomes an admitted claim in the bankruptcy.

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

The ISI has, by bringing stakeholders together, produced a standard protocol (precedent) document for the DSA and the PIA. This sets out the obligations of both debtors and creditors during the operation of the arrangement. Sample DSA and PIA protocol documents are annexed to this document.

A creditor participates as follows:

1. Proof of Debt: In DSA or PIA cases, after a PC has been issued by the court to a debtor, their PIP must write to the creditors involved to inform them of their appointment, and to invite them to submit proof of their debts and an indication of how their debt should be treated under the terms of the arrangement. In Bankruptcy, all creditors are required to submit formal proof of debt before a dividend is paid to them.

2. Vote: When a creditor's meeting is called by a PIP acting for a debtor who wishes to enter into a DSA or a PIA, the creditors involved are entitled to vote on the terms of the agreement, provided that they have proven their debt.

3. Objections: A creditor may object before the courts before the terms of a DSA or PIA come into effect. The specific terms are set out in legislation.[vii]

4. Offer of Composition: Creditors are entitled to vote on an Offer of Composition brought about by a bankrupt. This would occur when a bankrupt wishes to reach settlement with some or all of their creditors before the term of their bankruptcy has elapsed in order to retain all of their assets.

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

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?

Insolvency Proceedings

In respect of a DSA or PIA claims are not formally lodged by a creditor against a debtor. The first stage in the process is the completion of a debtor's Prescribed Financial Statement (PFS). The PFS lists all creditors and the amounts due to each creditor, and is the factual basis on which a PC is issued. Following the issue of the PC creditors may be asked by the PIP for proof of their debt in advance of an insolvency arrangement being prepared by the PIP. Where a creditor does not provide proof of debt after being requested to do so, there are implications in terms of voting rights for the arrangement and dividend share.

In respect of a DRN application, formal creditor claims are not made, but a creditor may be requested by an AI for confirmation that the sum disclosed by the debtor as due is the correct figure.

Fresh debts arising after the Arrangement date are not covered by the Arrangement. In the event that pre-existing debts change in magnitude, a variation to the overall arrangement may be required (e.g. contingent liability crystallises)

Bankruptcy

In bankruptcy, the profile of a bankruptcy estate (all of the bankrupt's assets and liabilities) is set out on two forms that the bankrupt is required to fill out and submit to the Bankruptcy Inspector on the day of their adjudication: the Statement of Affairs and the Statement of Personal Information. All types of liabilities are included as unproven claims in the bankruptcy provided that they were incurred by the debtor prior to their date of adjudication, i.e. the date that their bankruptcy term begins. Any debts that are incurred by the bankrupt after the date of adjudication cannot be included as a claim in the bankruptcy.[viii]

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

Insolvency Proceedings

Following the issue of a PC in DSA and PIA insolvency proceedings, the specified creditors are given notice of the issue of the PC and a copy of the debtor's PFS. The creditor may be asked to provide proof of debt and is asked what their preference is as to how they would like their debt treated. A creditor's debt shall be proved in the same manner as a debt of a bankrupt is proved under the Bankruptcy Act.

After the creditor has proven their debt, they will be entitled to vote at the statutory creditors' meeting convened to approve the debtor's proposal. If the creditor does not submit a proof of debt, or otherwise inadequately proves their debt, they cannot take part in the creditors' meeting or participate in any dividend payment provided for in the arrangement.

Bankruptcy

Notification of individuals who have been adjudicated bankrupt are sent to a list of financial institutions and Government Departments by the Bankruptcy Division of the ISI the day after the individuals are adjudicated bankrupt. Notice of these adjudications are also posted on the ISI website and in *Iris Oifigiul*, which is an official Irish State publication.

All secured creditors in a bankruptcy estate are given thirty days' notice (in writing or by email) from the date of adjudication to lodge proof of their claims in the bankruptcy estate. Such proof of debt can take the form of mortgage deeds, invoices, statements and bills, or in some circumstances an affidavit from the creditor may be required.

Before a dividend is paid to creditors in a bankruptcy estate, the ISI will advertise the upcoming payments and the cases they relate to. The creditors (both secured and unsecured) are again given thirty days to lodge their claims with the ISI, and the same burden of proof is required.

In all cases, creditors are required by the Bankruptcy Division of the ISI to fill out standardised Proof of Debt Forms, which are available on the ISI website.

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

Preferential Debt

In Personal Insolvency Arrangements (PIA) and Debt Settlement Arrangements (DSA), preferential debts are paid per the terms of the agreement, and in bankruptcy preferential debts rank directly after bankruptcy fees and any costs or expenses incurred by the OA when dealing with the bankruptcy estate. Debts that are considered to be preferential are:

Certain amounts due to the Revenue Commissioners, such as Income Tax, Capital Gains Tax, VAT, PAYE/PRSI etc.;

Certain Local Authority Rates incurred in the 12 months prior to the debtor's date of adjudication or entering into the arrangement (commencement date). This includes local council rates and charges;

Wages or salaries owed to any employees of the debtor for the 4 months previous to the commencement date;

Any pension-related, holiday-related or sick absence pay due to these employees.[ix]

Secured Debt

In a PIA, the secured creditor is bound by the terms of the agreement. In a normal PIA the secured lender is paid out of the debtor's income at whatever figure is agreed to in the arrangement. The debtor's remaining monthly income, if any, after the debtor's RLEs and PIP's fees are deducted is paid to their unsecured creditors by way of dividend.

Bankruptcy does not affect the rights of a secured creditor. Such a creditor may take one of the following three options with regard their secured debt:

Rely on their security – this means they effectively stay outside the bankruptcy;

Realise or value their security and claim for the shortfall (if any) – the creditor will calculate the fair market value of the secured asset and subtract this from the total owing. The resultant shortfall (if any) is admitted into the bankruptcy estate as an unsecured claim. During this process, the secured creditor may sell the asset in question;

Abandon their security – the secured creditor has an option to abandon their security entirely and have their claim admitted into the bankruptcy estate as an unsecured claim.

Unsecured Debt

In both a PIA and a DSA, the debts of unsecured creditors are settled under the agreed terms of the arrangement. In a DRN if a person's circumstances improve during the supervision period, he/she must tell the ISI and depending on the level of change, may be asked to make some contribution to what he /she owes.

The claims of unsecured creditors of a bankruptcy estate are ranked equally. Their debts are settled with the disbursement of any funds that remain after bankruptcy fees, OA expenses and preferential debts have been settled.

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

Insolvency Proceedings

The general condition for satisfactory closure of insolvency proceedings is that the debtor has complied with their obligations under the arrangement for the full term of the arrangement. Once this has happened, the debtor stands discharged from their unsecured debts. The status of secured debt will be dependent on the specific terms of the arrangement.

If the debtor breaches the terms of the DRN, DSA, or PIA, it may be terminated. If the debtor reaches 6 months of arrears in payments, the agreement is deemed to have failed. In either event, the debtor becomes liable for the full debts due by them, including all arrears, charges and interest accrued during the period of non-payment in respect of those debts.

Bankruptcy

A bankrupt who has complied with the bankruptcy process is automatically discharged from bankruptcy after one year. A bankrupt may, at any stage during their bankruptcy term, make an offer (composition) to their creditors in order to settle their debts. The bankrupt has to apply to the High Court for a stay on their bankruptcy proceedings; this stops the OA from further realising any assets in the estate. The bankrupt may then make the offer of composition in the High Court to his creditors. The offer of composition is voted on by the bankrupt's creditors; if at least 60% of these creditors (by number and by value of debt) agree to the terms of the offer, it will be passed.

Payment of the amount agreed under the offer of composition may be sourced from dividends of the estate or by funds from the bankrupt themselves. Any fees or expenses incurred by the OA's office in the administration of the bankruptcy need to be satisfied, as well as any preferential debts. Once the OA agrees to the High Court mediated offer of composition, the bankrupt is discharged from bankruptcy.

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

Insolvency Proceedings

Unsecured creditors – not applicable.

Secured creditors – the status of secured debt will be dependent on the specific terms of the arrangement.

Bankruptcy

In bankruptcy, creditors cannot pursue the bankrupt for any existing debts after the date of adjudication (debts incurred by the bankrupt post-adjudication may be pursued normally); they must instead liaise directly with the OA. Once the bankrupt is discharged from their bankruptcy, which is after one year for the majority of cases (incidences of non-compliance etc. may extend this term for up to 15 years), all unsecured debts (including preferential debts) are discharged. The debts associated with secured creditors, where they exercise their option to rely on their security, will persist after the date of discharge. For secured creditors, the bankruptcy proceedings shall not affect their rights over the secured asset.

If the secured creditor has valued their security and claimed in the bankruptcy for the shortfall (as an unsecured debt), the portion remaining after payment of any dividends will be written off after discharge. It should be noted that, even if a secured creditor only exercises their option to rely on their security (and not claim for the shortfall in the bankruptcy), they will be unable to pursue the debtor for any shortfall after they are discharged from bankruptcy. In this scenario, the net effect of bankruptcy on a secured loan (or mortgage) is that any portion of the loan over and above the value of the linked asset (at the date of adjudication) is treated as an unsecured debt.

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

Insolvency Proceedings

DSA or PIA: In insolvency proceedings, creditors generally bear the costs of the arrangement. PIP fees, as agreed with creditors at the time the arrangement is voted on and passed or on subsequent approval by court on a review, are deducted from available debtor funds. Where a creditor raises an objection to the issue of a PC or Arrangement, the creditor generally bears his or her own costs [x]. Where a creditor raises an objection to a proposed PIA, the creditor may apply to court for the award of costs if its objection is upheld [xi]. In the usual course of events costs follow the cause, i.e. the party whose actions incur the costs must pay them.

DRN: There are no costs involved in a DRN.

Bankruptcy

Creditors bear the costs of the bankruptcy, which are paid out of any funds available in the bankruptcy estate.

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

Insolvency Proceedings

Included under the conditions that a debtor has to meet before they can enter into insolvency proceedings is a provision that they must provide a complete and accurate statement of their financial affairs, and sign a statutory declaration confirming this information. The Personal Insolvency Practitioner (PIP) must also satisfy themselves that the debtor is being truthful, and has fully disclosed to them all pertinent information in relation to their financial situation. A creditor or PIP, or the ISI in respect of a DRN only, may apply to court to have an insolvency proceeding terminated under certain grounds provided for in the PI Act, including:

Debtor through their conduct has arranged their financial affairs so as to become eligible for an arrangement or DRN;

Procedural requirements of the Act have not been met;

Inaccuracies or omissions in the debtor's Prescribed Financial Statement (PFS) that has led, or may lead, to a material detriment to the creditor;

Eligibility requirements not complied with by the debtor;

Debtor has given a preference to a third party thereby reducing the amount available for the payment of their debts; or

The debtor has committed an offence under the Personal Insolvency Act 2012 (as amended).

The creditors do not have any right to seek reversal of any transactions or asset transfers prior to the commencement of the insolvency proceedings. However, if the debtor can be considered to have made excessive contributions to a pension fund, the creditor may seek financial relief from the courts. This may result in the court ordering that the fund provider issues a full refund of the amount for distribution among the creditors party to the arrangement.

Bankruptcy

Previous asset transfers and payments that bankrupts made to creditors or other individuals can be overturned under bankruptcy legislation. This includes situations where:

The bankrupt has paid an amount or transferred an asset to any creditor in preference to any other creditors to whom they owe a debt. The OA can seek to have such payments, made in the three years prior to the date of adjudication, reversed. If the OA is successful, the amount in question would be paid back into the bankruptcy estate for the benefit of all creditors;[xii]

The bankrupt has transferred or gifted an asset to a third party for an amount less than the fair market value. Upon successful application before the High Court by the OA, such transfers within three years prior to the date of adjudication can be voided and the shortfall would be paid into the bankruptcy estate for the benefit of all creditors;[xiii]

The bankrupt has transferred an asset or made a payment which can be considered to be an "avoidance transaction", i.e. the bankrupt was intending to avoid having the asset or sum of money considered as part of their bankruptcy estate. Two time periods apply in these cases:

Any such transactions made three years prior to the bankruptcy can be reversed by the OA on successful application to the High Court, and;

Any such transactions made five years prior to the bankruptcy, provided that the bankrupt fails to prove they were solvent at the time of the transaction.[xiv]

In all of the scenarios above, the OA must prove by affidavit before the High Court that these transactions did indeed occur in such a manner that satisfies the High Court under the terms of the legislation; thus, these transactions/transfers would be considered detrimental to the creditors of the bankruptcy estate.

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[i] Refer to Chapter 3 Sections 59-64 (DSA) and Chapter 4 Sections 93-98 (PIA) of the Insolvency Act 2012 (as amended) for Legislation regarding Protective Certificates (PC)

[ii] Section 115A of the Insolvency Act 2012 (as amended)

[iii] Refer to Part 5 of the Personal Insolvency Act 2012 for the legislative basis for a Personal Insolvency Practitioner, and the Personal Insolvency Act 2012 (Authorisation and Supervision of Personal Insolvency Practitioners) Regulations 2013 (S.I. No. 209 of 2013) for qualification criteria, regulatory standards and authorisation requirements. Refer to section 7 of the Personal Insolvency (Amendment) Act 2021 for the legislative basis of the PIP requesting a person to perform functions of a PIP.

[iv] Section 135 of the Personal Insolvency Act 2012 (as amended) and Section 17 of the First Schedule of the Bankruptcy Act 1988 (as amended)

[v] Section 135 (2) of the Personal Insolvency Act 2012 (as amended)
[vi] Section 61 and Section 136 of the Bankruptcy Act 1988 (as amended)
[vii] Section 87 (DSA) and Section 120 (PIA) of the Personal Insolvency Act 2012 (as amended)
[viii] Section 75 of the Bankruptcy Act 1988 (as amended)
[ix] Section 81 and Section 101 of the Bankruptcy Act 1988 (as amended)
[x] Section 97 of the Personal Insolvency Act 2012 (as amended)
[xi] Section 115 (a) of the Personal Insolvency Act 2012 (as amended)
[xii] Section 57 of the Bankruptcy Act 1988 (as amended)
[xiii] Section 58 of the Bankruptcy Act 1988 (as amended)
[xiv] Section 59 of the Bankruptcy Act 1988 (as amended)

Last update: 15/12/2023

Insolvency/bankruptcy - 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?

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 judgerapporteur, 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 judgerapporteur 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, grated in response to a request from the administrator and following a report from the judgerapporteur.

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 timelimit 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 judgerapporteur three days after expiry of the timelimit 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 judgerapporteur draws up a report on the verification of creditors; (e) in the event of doubt, the judgerapporteur 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 judgerapporteur. 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.*

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 timelimit 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 judgerapporteur. 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.

Last update: 23/02/2017

Insolvency/bankruptcy - Spain

1 Who may insolvency proceedings be brought against?

Insolvency proceedings (known as *concurso de acreedores*) apply to both civil debtors and traders, whether natural or legal persons. The regulations governing this are laid down in the Recast Text of the Insolvency Law (*Texto Refundido de la Ley Concursal*), approved by means of Royal Legislative Decree 1/2020 of 5 May 2020.

Law 25/2015 of 28 July 2015 introduced special provisions on the insolvency of natural persons so as to allow debtors to be released from unpaid debts in insolvency proceedings.

On 14 January 2022, the draft law reforming the Recast Text of the Insolvency Law was adopted in order to transpose Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt. This indepth reform of insolvency legislation is scheduled to enter into force in June 2022.

Any debtor can be declared insolvent, whether a natural person (including minors or persons lacking legal capacity) or a legal person, an entrepreneur or a consumer, although the law contains some specifications in relation to the type of debtor in question, especially in the case of commercial companies or consumers.

Legal persons can be declared insolvent, even if they are being wound up. It is irrelevant whether they form part of a group of companies, since one or several of the companies that form it may be declared insolvent, but not the group as such.

Insolvency proceedings may be opened with regard to an inheritance, provided that it has not been accepted unconditionally.

Authorities that make up the territorial organisation of the state, public sector bodies and other public law bodies cannot be declared insolvent.

2 What are the conditions for opening insolvency proceedings?

Conditions for opening insolvency proceedings

The law lays down certain subjective and objective prerequisites to be met in order to open insolvency proceedings:

A) Subjective prerequisite: any debtor can be declared insolvent, whether a natural or legal person, an entrepreneur or a consumer, although the law contains some specifications in relation to the type of debtor in question, especially in the case of commercial companies or consumers.

Authorities that make up the territorial organisation of the state, public sector bodies and other public law bodies cannot be declared insolvent.

B) Objective prerequisite: the debtor’s insolvency, defined as the inability to pay its liabilities on a regular basis.

Parties that can apply to open proceedings

Depending on whether the application for insolvency proceedings is lodged by the debtor or by the creditors, the requirements for submission vary.

If insolvency proceedings are applied for by the debtor (voluntary proceedings), it must justify before the court that it is currently insolvent or will be so imminently; that is, that it cannot pay its liabilities on a regular basis. If the insolvency is current, the debtor is obliged to apply for insolvency proceedings within two months from when it becomes aware or should have become aware of its insolvency.

However, according to the law, in this two-month time frame, the debtor may notify the court that it is negotiating an agreement with the creditors to refinance the debt; in which case, the deadline is suspended during the negotiations and the creditors cannot initiate separate enforcement proceedings against the assets that the debtor requires for its activity for three months. After this period has elapsed, if they do not reach an agreement with the creditors, debtors must apply for insolvency proceedings within one month.

With the application, debtors must submit certain documents, such as a report on their economic activity, an inventory of assets, a list of creditors indicating credit guarantees, a list of employees and their accounts, if they are obliged to keep them.

Debtors, who may be natural or legal persons, are required to apply for insolvency proceedings when they are in a situation of current insolvency, defined as when a person cannot pay his or her liabilities on a regular basis. On the other hand, if the insolvency is imminent (it does not exist yet but it is anticipated), debtors are simply entitled to apply for an insolvency order.

Submission of the application to the commercial court (*juzgado de lo mercantil*) must comply with certain mandatory requirements provided for in Articles 6 and 7 of the Recast Text of the Insolvency Law: a report on the debtor’s financial and legal history; indication of whether it engages in an economic activity; if it is a legal person, it must identify its shareholders, administrators or liquidators and the official auditor; inventory of assets and rights, with the corresponding information for their identification; alphabetical list of creditors, indicating address and amount and maturity of the claims, and the existing guarantees; where applicable, a list of employees; if the debtor is obliged to keep accounts, it must supply the account books; and if it belongs to a group of companies, it must indicate so and submit the group’s consolidated accounts.

Debtors have an obligation to collaborate with the judge in charge of the insolvency proceedings and with the administrators, not only in the passive sense of submitting to the requirements made of them, but in the active sense of communicating anything of importance. This obligation also involves the obligation to appear (before the court and before the administrators), to collaborate and to inform. These obligations affect debtors that are natural persons and the de facto or de jure directors of legal persons, whether they are current or have served the role in the previous two years. Non-compliance with this obligation results in the presumption of wilful misconduct or gross negligence, for the purposes of declaring the insolvency culpable (in cases to which the culpability section applies; that is, due to approval of a detrimental arrangement or the opening of winding-up proceedings).

The debtor may be declared responsible for the insolvency and sanctioned. One of the purposes of insolvency proceedings is to analyse the causes of the insolvency and, in particular, whether the behaviour of the debtor, or other persons linked to it directly or in an accessorial manner, has contributed to causing or aggravating it. This involves clarifying the corresponding liabilities using the table of sanctions set out in Articles 455 and 456 of the Recast Text of the Insolvency Law.

Opening of proceedings and time at which proceedings take effect

The judge must examine the documentation submitted and if the insolvency or imminent insolvency is justified, he or she must declare the debtor insolvent on the same day as the application or the following day. If the documentation submitted is incomplete, the judge may allow a single period of five days to complete it.

Insolvency proceedings may also be applied for by any of the creditors, in which case they are compulsory proceedings (*concurso necesario*). Creditors applying for an insolvency order must provide evidence of the debtor’s current insolvency and present proof of an enforcement order against the debtor showing that sufficient assets were not obtained for recovery of the debt, or they must provide evidence of certain facts leading to presumption of insolvency, such as: the debtor having ceased payment of liabilities in general; the existence of widespread attachment of the debtor’s assets; the hurried concealment or liquidation of assets; or non-payment of certain debts (taxes, social security, workers’ claims).

If insolvency proceedings are applied for by a creditor, the debtor is summonsed and may contest the insolvency order. In such cases, the judge convenes a hearing where the parties may put forward evidence with certain limitations, and the judge must decide whether the debtor is currently insolvent or not and, where appropriate, issue the insolvency order. Proceedings are also opened if the debtor accepts the insolvency order, does not contest it or does not appear at the hearing.

Debtors that are natural persons in situations of current or imminent insolvency which have estimated liabilities of no more than five million euro may apply for a procedure to reach an *out-of-court payment agreement*. Legal persons that fulfil the requirements provided for in Article 631 of the Recast Text of the Insolvency Law may also do so.

The decision opening insolvency proceedings takes effect once issued, even if an appeal is lodged.

Publication of the insolvency order

The insolvency order must be published preferably by means of electronic media, and an extract of the decision must be published in the Official State Gazette, although the judge may order its publication in more media if he or she deems this indispensable.

Provisional measures

At the request of the person applying for insolvency proceedings and, if applicable, after providing a security to cover potential liabilities, once the judge admits the application, he or she may adopt the necessary measures to ensure the debtor's assets are not disposed of, in the manner provided for under general procedural law.

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?

Assets that form part of the insolvency estate

All assets and rights held by the debtor at the time of the insolvency order form part of the insolvency estate or the 'assets covered by the proceedings', as well as all of those the debtor acquires or that are clawed back during the proceedings. Assets that the law declares non-attachable are exempt.

Creditors with preferential rights over ships or aircraft may separate these assets from the insolvency estate by taking the actions permitted by the sectoral legislation.

In the case of insolvency proceedings with debtors that are natural persons and are married, their separate assets will form part of the assets covered by the proceedings, and if they have a community property arrangement, the shared assets will also be included, if they are required to cover the debtor's obligations.

Insolvency proceedings do not require interruption of the debtor's activity and it may continue with its company's operation, according to the arrangement agreed for authorisation or suspension of its powers. In general, authorisation is required from the administrators for administration or disposal of assets in cases of supervision of the debtor's powers, but it is possible for certain acts of a general nature to be authorised if they form part of the company's normal activity. In principle, until approval of the arrangement with creditors or the opening of winding-up proceedings, assets cannot be encumbered in order to finance the insolvent company without authorisation from the judge. The following section explains the arrangements for suspension or supervision of the debtor's powers.

Half of financing through new cash income in the context of a refinancing process is considered a claim against the insolvency estate.

4 What powers do the debtor and the insolvency practitioner have, respectively?

The debtor's powers

In principle, the point of departure is the distinction between voluntary proceedings and compulsory proceedings (Article 29). In the first case, the debtor continues to administer and dispose of its assets and is subject to the supervision of the administrator, requiring their authorisation or consent. For compulsory proceedings, the debtor's powers to administer and dispose of its assets are suspended, and the debtor is substituted by the administrator. The regulation does not intend to sanction the debtor, but rather its purpose is to preserve the assets and safeguard the result of the proceedings.

The criterion, however, is continuation of the debtor's economic activity, for which Article 111 permits the administrator to establish a catalogue of activities which, due to their nature and amount, are exonerated from the necessary control. The system is flexible since the judge may, by reasoned decision, order the suspension of powers in the case of voluntary proceedings and order mere supervision, under an authorisation or consent arrangement, in the case of compulsory proceedings, indicating the risks he or she hopes to avoid and the advantages hoped to be gained.

Likewise, at the request of the administrator, the initial arrangement for limitation or exchange of powers may be modified at any later stage, also by reasoned decision and having heard the debtor (the change is not automatic), with the requirement that this change be given the same publicity as was given to the insolvency order.

Once the proceedings have ended, the limitation of powers also ends. Otherwise, it is prolonged until approval of the arrangement with creditors, which may establish measures limiting or prohibiting the debtor's powers. If the insolvency proceedings close with winding-up, the opening of this phase means that the debtor's powers are suspended.

The Insolvency Law, as a general rule, intends for the assets of the debtor covered by the insolvency proceedings to remain unaltered; however, in certain cases, it is possible for some of the debtor's assets to be sold during insolvency proceedings with the judge's authorisation, which will not be required in some cases. The sale of production units during insolvency proceedings is also possible, in the manner laid down in Articles 215 et seq. of the Recast Text of the Insolvency Law.

As an exception to the general rule of continuity of the debtor's activity, it is established that at the request of the administrator, and having heard the debtor and the workers' representatives, the debtor's offices may be closed or its activity may be suspended. When this entails the collective termination, suspension or amendment of employment contracts, the judge must act in accordance with special rules.

The law also lays down specific obligations with regard to the debtor's accounts and the effects of insolvency proceedings on the governing bodies of insolvent legal persons are regulated separately.

Appointment and powers of insolvency administrators

The administrator is a necessary person or body that assists the judge and is entrusted with managing the insolvency proceedings. Once insolvency proceedings have been opened, the judge orders the initiation of phase two of the proceedings, which includes everything relating to the appointment, provisions governing, powers and responsibilities of the administrator.

The administrator is chosen from among the natural and legal persons voluntarily registered in the Public Insolvency Register (*Registro Público Concursal*), in accordance with the conditions established by law. For these purposes, a distinction is made between small-, medium- and large-scale insolvency proceedings. The first appointment from the list takes place by draw and subsequently by turn, with the exception of large-scale proceedings, when the judge may appoint the administrator he or she deems most appropriate, stating the grounds and following the criteria laid down by the law. In the case of insolvency proceedings involving credit institutions, the judge must appoint the administrator from among those proposed by the Fund for Orderly Bank Restructuring (*Fondo de Reestructuración Ordenada Bancaria*). The judge must appoint administrators from among those proposed by the National Securities Market Commission (*Comisión Nacional del Mercado de Valores*) when dealing with proceedings involving institutions subject to its supervision or by the Insurance Compensation Consortium (*Consorcio de Compensación de Seguros*) in the case of insurance companies.

Normally, only one administrator is appointed. As an exception, in insolvency proceedings where there are public interest grounds justifying it, the insolvency judge may appoint a public administration creditor or a public law body creditor linked or answerable to that public administration as a second administrator.

Articles 57 et seq. of the Recast Text of the Insolvency Law set out in detail the legal status of the administrator, which assumes the following types of duties: duties of a procedural nature; duties relating to the debtor or its governing bodies; duties regarding labour matters; duties relating to creditors' rights; report and evaluation duties; duties relating to the realisation or liquidation of assets; and secretarial duties. Their most important duty is to submit the report provided for in Article 292, to which they must add an asset inventory proposal and the list of creditors.

The payment of administrators is set by the judge in accordance with a fee scale, as laid down in Royal Decree 1860/2004 of 6 September 2004.

The appointed administrator must accept the role and may be rejected or dismissed by the judge if there is just cause. Administrators may also appoint delegated assistants to aid them in their duties.

The insolvency judge

Competence to hear insolvency proceedings belongs to the area of commercial justice, as a specialised branch of civil justice. The judge declares insolvency and leads the proceedings. Article 86ter of Organic Law 6/1985 of 1 July 1985 on the judiciary (*Ley Orgánica del Poder Judicial*) establishes a catalogue of the competences of commercial court judges, including, in particular, any issues that arise in the area of insolvency proceedings.

In the insolvency order, or beforehand as a precautionary measure, the judge may limit the debtor's fundamental rights. These limitations may involve: (a) interception of postal and telephone communications; (b) the obligation to reside in the same area as its address, with the possibility of house arrest; and (c) entry and search of the residence. If the debtor is a legal person, these measures may also be adopted with regard to all or some of its current directors or liquidators, and those that have carried out the role in the previous two years.

For their part, Articles 52 and 53 of the Recast Text of the Insolvency Law grant 'exclusive and exclusionary' competence to the insolvency judge over a set of matters covering, in general, all actions that are directed towards or have a direct relationship with the debtor's assets. The judge is also competent to collectively accept or suspend employment contracts when the employer is declared insolvent and to hear liability actions against the directors or liquidators of the insolvent company.

For preliminary rulings, and for the purposes of the insolvency process only, the judge's competence also extends to administrative or social matters related directly to the insolvency proceedings.

The Insolvency Law lays down rules on international and territorial jurisdiction and specific rules on the procedural course to be followed, which take precedence over those established in the general procedural legislation.

5 Under which conditions may set-offs be invoked?

Once insolvency proceedings have been opened, there can be no set-off of claims or debts of the debtor. However, set-off is permitted if its requirements were met prior to the insolvency order, even if the decision is issued at a later time. These requirements are provided for in general in Article 1196 of the Civil Code (*Código Civil*) (reciprocity of the claims, uniformity of the debts, and that they are due and payable).

Insolvency proceedings with a foreign element are exempt from this rule if the law applicable to the debtor's reciprocal claim allows this in situations of insolvency.

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

Effects on the contracts to which the debtor is party

The Recast Text of the Insolvency Law regulates the effects of insolvency proceedings on the contracts entered into by the debtor with third parties under Articles 156 et seq., the provisions of which affect those contracts pending fulfilment prior to the insolvency order. The issue is considered with regard to bilateral contracts, since unilateral contracts will determine recognition of the claims of third-party creditors or the demand for their claims to be included in the assets covered by the proceedings, as expressed in Article 157. Contracts entered into with public administrations are regulated by special administrative law.

As a general principle, Article 156 establishes that the insolvency order alone does not affect contracts with reciprocal obligations pending fulfilment by the debtor or by the other party. The debtor's obligations are charged against the insolvency estate. Any compensation resulting from termination is also considered a claim against the insolvency estate.

Reinforcing the validity of these contracts, the law deems as invalid any clause establishing the power to cancel or terminate the contract due solely to one of the parties being declared insolvent.

If it is in the interest of the insolvency proceedings, the administrator (in the case of suspension) or the debtor (in the case of supervision) may request termination of the contract by the insolvency judge. In such cases, the judge must summons the debtor, the administrator and the other party to the contract to appear before the court. If an agreement is reached between those appearing before the court, the judge will issue an order terminating the contract. Otherwise, the dispute will be processed through an incidental insolvency proceeding and the judge will decide upon anything relating to the return of payments and compensation, which will be charged against the insolvency estate, and clearly may not be advantageous if the amount is considerable.

Termination due to breach of contract

An insolvency order does not affect the termination of bilateral contracts due to subsequent breach by either party. In the case of continuing-performance contracts, the power to terminate may also be exercised if the breach took place prior to the insolvency order. However, even if there are grounds for termination, the judge, bearing in mind the interests of the insolvency proceedings, may order fulfilment of the contract, with the payments due or which must be performed by the debtor being charged against the insolvency estate.

Actions to terminate contracts must be brought before the insolvency judge, through the channel of incidental insolvency proceedings. Once the request is upheld (and, therefore, the termination of the contract agreed), any outstanding liabilities will cease to be valid. With regard to liabilities due, the insolvency proceedings will include the claims of creditors that have fulfilled their contractual obligations, if the debtor's breach was prior to the insolvency order; if it was subsequent, the claims of parties that have fulfilled their obligations will be charged against the insolvency estate. The claims will include any compensation for damages.

Articles 169 et seq. of the Recast Text of the Insolvency Law contain provisions regulating the effects on employment contracts, and the following article regulates the effects on senior management contracts.

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

Prohibition of new declaratory judgment actions

Civil and labour court judges cannot admit actions which should be heard by the insolvency judge (essentially, those directed against the debtor's assets). If by error one of these actions were admitted, the closure of all proceedings will be ordered and any actions taken will be invalid. Commercial court judges must also abstain from admitting any actions lodged after the opening of insolvency proceedings and until their completion, if those actions involve claims relating to corporate obligations against the directors of insolvent capital companies that have breached their duties if there are grounds for winding-up.

Effects of the insolvency order on enforcement and collection proceedings against the debtor's assets

The general rule is that once insolvency proceedings have been opened, individual, court or out-of-court enforcement proceedings may not be initiated, nor may administrative or tax collection proceedings against the debtor's assets continue. If this prohibition is infringed, the sanction will be that the action is declared null and void. The rule establishes two exceptions where enforcement may continue despite the insolvency order and until approval of the winding-up plan: (a) administrative enforcement proceedings in which attachment orders have been handed down; and (b) labour-related enforcement proceedings involving attachment of assets belonging to the debtor prior to the order, and provided that the attached assets are not necessary for the continuance of the debtor's business or professional activity.

For pending enforcement proceedings, Article 55(2) stipulates that actions that are underway must be suspended as of the date of the insolvency order, though the corresponding claims may be processed in the insolvency proceedings.

There are special rules for enforcing collateral, which are set out in the next section, since this involves dealing with the effects on certain claims.

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

Effects on declaratory proceedings pending at the time of the insolvency order

Declaratory proceedings involving the debtor that are pending at the time of the insolvency order will continue until the final judgment, although, notwithstanding this, proceedings of legal persons claiming damages against their directors, liquidators or auditors will be joined to the insolvency proceedings and will continue their procedural course.

Arbitration proceedings: arbitration agreements involving the debtor become invalid during insolvency proceedings (Article 52); therefore, the initiation of arbitration proceedings is prohibited after the insolvency order. Those that are underway will continue until the final arbitration award.

The debtor's right to bring actions

The law determines the debtor's legitimacy to bring actions according to the powers it retains. In general terms, if the debtor is under administration, the administrator has the right to bring actions of a non-personal nature; if the debtor is under supervision, it has the right to bring actions with proper authorisation from the administrator if the actions affect the debtor's assets. In the case of supervision, if the administrator considers that bringing an action is advisable in the interests of the insolvency proceedings and the debtor does not pursue it, the judge may authorise the administrator to do so.

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

Participation of creditors in insolvency proceedings

Creditors may apply to the judge for insolvency proceedings and the debtor may contest the application, in which case a hearing is held and the judge issues a decision by way of order. If the judge opens insolvency proceedings, they will be considered 'compulsory', which normally means that the debtor is suspended from administration and disposal of its assets and is replaced by the administrator.

When insolvency proceedings are opened, creditors are granted a period of one month from publication of the order in the Official State Gazette to make their claims, and the administrator must inform each of the creditors identified in the debtor's documentation of the responsibility to communicate their claims. The period is no different for creditors domiciled abroad. This communication must be written and addressed to the administrator, and it must identify the claim with the necessary information on amount, the dates on which the claim arose and became due, characteristics and expected classification, and if a special preferential right is alleged, the assets or rights subject to payment and their registry details must be indicated. The supporting documentation must also be included. These communications may be carried out electronically.

The administrator must decide on the inclusion or exclusion of each claim and its amount, as well as its classification, in a list of creditors which will accompany their report. Creditors that are dissatisfied with the classification or amount of the claim or those that were not included can challenge the report within a period of 10 days by filing for an incidental insolvency proceeding, on which the judge will issue a judgment. Prior to submitting the report (in the 10 days before its submission), the administrator will send an electronic communication to the creditors whose address it has informing them of the draft list of creditors and inventory. Creditors that are dissatisfied may write to the administrator for the purpose of rectifying any error or providing any other necessary information.

Creditors also take part in the arrangement and winding-up phases. In the arrangement phase, they may submit an arrangement proposal and may also offer their adherence to the early arrangement proposal submitted by the debtor. In any case, they will be summonsed to a creditors' meeting where the arrangement will be debated and its approval voted on. This requires the attendance of the majorities provided for in Article 124 of the Insolvency Law. This process may also take place in writing when the number of creditors exceeds three hundred.

Some creditors may contest the approval of the arrangement (those that do not attend the meeting or those that are illegitimately deprived of their right to vote) and, once approved, creditors may request non-compliance with the arrangement.

In the winding-up phase, creditors may submit comments on the winding-up plan presented by the administrator and on the final report, before the insolvency proceedings are declared closed.

In the classification phase, creditors have party status and may submit comments on the report by the administrator and on the opinion of the public prosecutor's office, although they cannot legitimately make independent classification claims.

Lastly, with regard to the closure of insolvency proceedings, creditors may also submit comments contesting the closure in certain cases.

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

Disposal of assets of the insolvency estate in the initial phase

Given that insolvency proceedings do not suspend the debtor's activity, once insolvency is declared, the debtor may continue to dispose of its assets in accordance with the established supervision arrangement: if it is under supervision, it will be subject to the authorisation or consent of the administrator, and if it is under administration, the administrator will be responsible for disposal of its assets.

Until the arrangement is approved or until the winding-up phase begins, in principle, the assets of the insolvency estate may not be disposed of or encumbered without the judge's authorisation. This does not include: (a) the sale of assets that the administrator deems indispensable for guaranteeing the viability of the company or the cash requirements required by the proceedings; (b) the sale of assets that are unnecessary for continuance of the debtor's activity, with the assurance that the price corresponds substantially to the value assigned to the asset in the inventory; and (c) disposal of assets that are intrinsic to the continuation of the debtor's activity.

In this last case, when the debtor is not suspended from administration and disposal of its assets, the administrator may determine in advance the actions or operations inherent to the company's business or trade, which the debtor may carry out itself depending on their nature and amount. The debtor may also carry out these actions from the time of the insolvency order until the administrator takes up their duties.

Disposal of assets of the insolvency estate in the winding-up phase

There are two main phases in the winding-up process:

(a) Handling of winding-up operations in accordance with a plan written up by the administrator, which is subject to comment from the debtor, the creditors and the workers' representatives, and which is subject to court approval. The law aims, wherever possible, to safeguard the company and for this purpose it lays down special rules for the sale of production units. The plan may be challenged before the judge, and the winding-up operations must be carried out following the provisions of the plan. If the plan is not approved, the law provides for default rules.

(b) Payment of creditors, with the proviso that payment can begin even if the winding-up operations have not ended.

However, it must be specified that not all winding-up operations take place at this stage of the proceedings. Certain assets may be realised during the initial phase for purposes other than payment of creditors, such as in the following cases: assets covered by the proceedings may be preserved with the goal of maintaining the debtor's economic activity; creditors with preferential rights over ships or aircraft may separate those assets from the insolvency estate as part of the actions they are entitled to under special legislation; and, lastly, certain enforcement proceedings initiated by individual preferential creditors prior to the insolvency proceedings may continue their process, as well as administrative enforcement proceedings if the attachment order was issued before the insolvency order.

The sale of assets during winding-up takes place, in principle, with considerable freedom, in accordance with the provisions of the winding-up plan approved by the judge. The administrator may also hire a specialised entity to sell certain assets, normally at the expense of its own remuneration. However, the reform brought about by Law 9/2015 of 25 May 2015 laid down mandatory rules, especially with regard to assets and rights subject to preferential claims. In matters not covered by the plan, the rules on the disposal of assets in individual enforcement actions in civil proceedings will be applied. Normally, the assets

are sold through an outright sale system, with certain publicity guarantees depending on the nature of the asset in question. Assignment in or towards payment of non-public creditors is also permitted.

The law lays down specific rules for the sale of production units throughout the phases of the insolvency proceedings (led by the principle of safeguarding the company), so that with a single sales contract all of the assets are transferred and with special rules for the transfer of the liabilities of the activity in question. In principle, the sale of production units means the transfer of all contracts that are instrumentally linked to the activity, but not the assumption of debts from before the insolvency proceedings, except if the purchasers are linked to the debtor or the labour rules on business succession apply. In such cases, the judge may give consent for the purchaser not to assume the amount of wages or compensation pending payment prior to the disposal and for it to be covered by the Salary Guarantee Fund (*Fondo de Garantía Salarial*). In order to ensure the company's survival, the new purchaser and the workers may enter into agreements to modify the collective working conditions.

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?

Once insolvency proceedings are opened, the claims of all of the creditors, whether unsecured or preferential, and regardless of their nationality and domicile, are included among the debtor's liabilities. The purpose here, based on the principles of *par condicio creditorum* and compliance with the 'dividend law' (*ley del dividendo*), is to give all claims equal treatment in the context of the debtor's verified insolvency and when it comes to settling all of its debts. There is an initial essential distinction between insolvency creditors and creditors that are not affected by the insolvency proceedings: insolvency estate creditors.

Claims against the insolvency estate are outlined in Article 242 of the Recast Text of the Insolvency Law with a restricted list, meaning that claims that are not included are considered insolvency claims. In principle, and in the vast majority of cases, these are claims generated after the insolvency order, as a result of the proceedings or of the continuation of the debtor's activity, or claims that arise due to non-contractual liability. However, other cases are also included, such as wage claims for the last 30 days of work prior to the insolvency order and in an amount that does not exceed twice the minimum guaranteed interprofessional wage, and maintenance claims of the debtor or the people it is legally obliged to provide maintenance for.

In other cases, these claims arise from decisions issued during the proceedings; for example, in determining the consequences of revocatory actions or as a result of the termination of contracts.

Half of the amount of the claims arising from new cash income granted in the framework of a refinancing agreement can also be considered claims against the insolvency estate.

In the case of winding-up proceedings, claims granted to the debtor in the context of an arrangement and in accordance with the provisions of the article are also claims against the insolvency estate.

Claims against the insolvency estate are 'pre-deductible'; that is, they have preference over all other claims and they are not affected by the suspension of interest accrual.

Salary claims for the last 30 days of work must be paid immediately. The rest of the claims against the insolvency estate are paid as they fall due, but the administrator may change this rule if required in the interests of the insolvency proceedings and if there are sufficient assets for payment of all of the claims against the insolvency estate.

However, the law lays down specific rules (Article 473) for cases in which the debtor's assets are presumably not enough to pay the claims against the insolvency estate. In such cases, closure of the insolvency proceedings is compulsory. If the administrator anticipates this, they must inform the judge and proceed to payment of the claims against the insolvency estate according to a specific order.

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

When insolvency proceedings are opened, creditors are granted a period of one month from publication of the order in the Official State Gazette to make their claims, and the administrator must inform each of the creditors identified in the debtor's documentation of the responsibility to communicate their claims. There is no special form for this. The period is no different for creditors domiciled abroad, although the provisions of Articles 53 and 55 of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings will apply.

The communication of the claim must be written and addressed to the administrator, and it must identify the claim with the necessary information on amount, the dates on which the claim arose and became due, characteristics and expected classification, and if a special preferential right is alleged, the assets or rights subject to payment and their registry details must be indicated. The supporting documentation must also be included. These communications may be carried out electronically.

The administrator must decide on the inclusion or exclusion of each claim and its amount, as well as its classification, in a list of creditors which will accompany their report. Creditors that are dissatisfied with the classification or amount of the claim or those that were not included can challenge the report within a period of 10 days by filing for an incidental insolvency proceeding, on which the judge will issue a judgment. Prior to submitting the report (in the 10 days before its submission), the administrator will send an electronic communication to the creditors whose address it has informing them of the draft list of creditors and inventory. Creditors that are dissatisfied may write to the administrator for the purpose of rectifying any error or providing any other necessary information.

If creditors do not communicate their claims in a timely manner, they may still be included in the list by the administrator or by the judge when deciding upon challenges to the list of creditors, but they will have subordinate status. However, the claims in Article 86(3), claims arising from the debtor's documentation, claims that are recorded in an enforceable document, claims secured by collateral recorded in a public register, claims that are recorded in another manner in insolvency proceedings or in other legal proceedings, and claims whose verification is required from the public administrations will not be subordinated on these grounds and will be classified accordingly.

Claims that do not meet even these criteria for inclusion in the list, having been communicated after the deadline, lose all possibility of being paid in the insolvency proceedings.

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

The law classifies insolvency claims into three categories (Article 269): preferential, unsecured and subordinate. Preferential claims, for their part, are subdivided into special and general and then into different classes in the manner provided for in Article 287. The classification of claims in the Insolvency Law operates following an automatic approach. The category of unsecured claims is residual: all claims that do not enter into the other two categories of preferential or subordinate are unsecured.

A) Claims with special preference (Article 270) include:

1. Claims secured with a real estate mortgage, a chattel mortgage, or with a registered lien on the mortgaged or pledged assets or rights.
2. Claims secured by the pledging of income from encumbered property.
3. Loan claims on restored assets, including the claims of workers on the objects manufactured by them while they are the property or in the possession of the debtor.

4. Claims on financial lease payments or purchase in instalments of movable or immovable assets, to the benefit of the lessors or sellers and, if applicable, the financial backers, on assets leased or sold with reservation of title, with a prohibition on disposal or with a condition subsequent in the case of non-payment.
5. Claims guaranteed with securities represented in account entries, on the encumbered securities. 6. Claims secured by a pledge established in public documents, on pledged assets or rights that are in the possession of the creditor or of a third party.
Special preference will only affect the part of the claim that does not exceed the value of the respective guarantee recorded in the list of creditors. The amount of the claim that exceeds the amount recognised as having special preference will be classified according to its nature.
B) Claims with general preference (Article 280) include:
1. Wage claims that do not have special preference, of the amount resulting from multiplying triple the minimum guaranteed interprofessional wage by the number of days of wages pending payment; compensation arising from the termination of contracts, of the amount corresponding to the legal minimum calculated on a basis of no more than triple the minimum guaranteed interprofessional wage; compensation arising from workplace accidents and occupational illness, accrued prior to the insolvency order.
2. The amounts corresponding to tax and social security withholdings owed by the debtor in compliance with a legal obligation.
3. Claims of natural persons arising from freelance work and those that correspond to authors for the assignment of the exploitation rights of works subject to intellectual property protection, accrued during the six months prior to the insolvency order.
4. Tax claims and other public law claims, as well as social security claims that do not enjoy special preference. This preferential right may be applied to up to 50% of the overall claims of the tax authority and the overall claims of the social security system, respectively.
5. Claims for non-contractual civil liability.
6. Claims arising from new cash income granted in the context of a refinancing agreement that meets the conditions laid down in Article 71(6) and of the amount not recognised as a claim against the insolvency estate.
7. Up to 50% of the amount of the claims held by the creditor that applied for the insolvency proceedings and which are not considered subordinate.
C) Subordinate claims are contained in Article 281:
1. Claims that have been communicated late, except where these relate to claims under forced recognition or due to court decisions.
2. Claims that, on the basis of contractual agreement, are subordinated.
3. Claims for surcharges and interest.
4. Claims for fines and penalties.
5. Claims held by any persons with a special relationship with the debtor under the terms established in this Law.
6. Claims arising from revocatory actions due to a person having been declared to have acted in bad faith in the contested act.
7. Claims arising from contracts with reciprocal obligations or, in the case of reinstatement, in the situations laid down in the provision.

Payment of claims

The payment of claims with special preference is charged to the assets and rights covered by the proceedings, whether subject to individual or collective enforcement. There are special rules with regard to these claims, which authorise the administrator to pay them from the insolvency estate without the realisation of specific assets, freeing the encumbrances. It is also possible for the assets to be sold with the continued existence of the lien, and with the purchaser assuming the debtor's liabilities. For the sale of these assets, the law lays down specific rules in Articles 429 et seq.
Claims with general preference are paid according to their order and on a pro rata basis within each category. Afterwards, unsecured claims are paid, although the order of payment may be changed by the judge at the request of the administrator and under certain conditions. Unsecured claims are paid on a pro rata basis and according to the liquidity of the assets of the insolvency estate.
Subordinated claims are paid last and according to the order provided for in Article 309.

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

Reorganisation proceedings

'*Reorganisation proceedings*' can refer to two different situations: the creditors' arrangement as a way of resolving insolvency proceedings, and the possibility for the debtor to avoid insolvency proceedings through a debt reorganisation or restructuring agreement with its creditors. Both situations are regulated in the Insolvency Law.

(A) Creditors' arrangement

After the initial phase of the insolvency proceedings, when the assets and liabilities covered by the proceedings have been definitively established, there are two possible solutions: creditors' arrangement or winding-up. Achieving a creditors' arrangement takes precedence, since the law establishes that the arrangement phase must always be opened unless the debtor has requested winding-up proceedings.
Both the debtor and the creditors that exceed a fifth of its liabilities may submit an arrangement proposal once the initial phase is over. The debtor is also authorised to submit an early arrangement proposal, although some debtors are excluded from this option (debtors convicted of certain crimes and those that do not submit annual accounts when they are obliged to).
The early arrangement proposal is aimed at the debtor and its creditors making an arrangement quickly and without exhausting all of the phases of the insolvency proceedings. In order to process the proposal, it must be subscribed to by a certain percentage of creditors. Once the proposal is submitted, it must be evaluated by the administrator and the rest of the creditors may subscribe to it; if they reach the required majorities, the judge will issue a judgment approving the arrangement submitted.
Normal processing of the arrangement phase begins with a court decision ending the initial phase; in it, the judge will set a date for the creditors' meeting, although if the number of creditors exceeds three hundred, the process can take place in writing. As of this point, a period commences for the debtor and the creditors to submit their arrangement proposals, which must have basic minimum content. If they fulfil all of the conditions, the judge will admit the proposals and they will be sent to the administrator for evaluation.
The creditors' meeting will be presided over by the judge and in order for it to be considered validly convened, creditors representing over half of the unsecured claims must appear. The debtor and the administrator are obliged to attend. At the meeting, the arrangement proposals will be debated and voted on, and in order to be approved, they must obtain the majorities provided for in Article 124 of the law, depending on their content. Next, the judge will issue a judgment approving the proposal accepted by the meeting, and there is a prior procedure for the administrator and the creditors that did not attend or were deprived of their rights to contest the proposal.
The arrangement comes into effect as of the day of the judgment approving it and as of that moment the effects of the insolvency proceedings come to an end and are replaced by those established in the arrangement. The role of the administrator also comes to an end. The arrangement binds the debtor and the unsecured and subordinate creditors, as well as the preferential creditors that voted in favour. It may also bind the preferential creditors depending on the majorities reached in its approval. Once the arrangement has been implemented, the judge will declare this fact and order the closure of the insolvency proceedings.

If the arrangement is not complied with, any creditor may request a declaration of non-compliance from the judge.

(B) Debt reorganisation through refinancing agreements to avoid insolvency proceedings

The experience gained since publication of the Insolvency Law has revealed the failure of insolvency proceedings as a means to achieve business continuity on the basis of the solution agreed. Therefore, the Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency urged Member States to adopt measures to avoid insolvency proceedings through debt refinancing agreements between the debtor and the creditors. In the most recent reforms to the Insolvency Law, the Spanish legislator introduced four types of measures in this regard: (a) the establishment of a prior communication system for the debtor to inform the commercial court judge that it has commenced negotiations with its creditors in order to reach a refinancing agreement, which suspends the obligation to apply for insolvency proceedings and permits the staying of individual enforcement actions in certain cases and for a certain period of time; (b) the establishment of protective mechanisms to safeguard refinancing agreements against revocatory actions; (c) the establishment of an official approval procedure for refinancing agreements in order to reinforce their effects; and (d) incentive measures for the conversion of debt into equity. In this section, we focus on the regulation of court approval of refinancing agreements, contained in the fourth additional provision of the Insolvency Law.

Refinancing agreements signed by creditors representing at least 51% of the financial liabilities may be approved by the court. The law lays down specific rules regarding the calculation of the percentages of financial liabilities and regarding syndicated loans.

The process involves the submission by the debtor or the creditors of an application accompanied by a certificate from the auditor confirming the participation of the majorities required in each case, according to the level of protection sought, with the minimum of 51% of the financial liabilities. The judge will examine the application and if it is admitted, he or she will issue an order declaring a stay on individual enforcement actions during the approval procedure.

Once the approval order is published, a period of 15 days commences for dissenting financial creditors to challenge it. The only grounds for challenging are either non-compliance with the formal requirements, or the disproportionate nature of the sacrifice demanded. Challenges are processed in an incidental insolvency proceeding involving the debtor and the rest of the creditors that are party to the agreement, and a non-appealable judgment is given. It is also expressly stipulated that, in relation to the effects of the court-approved agreement, which are valid as of the day after the publication of the judgment in the Official State Gazette, the judge may order cancellation of any attachment carried out through individual enforcement proceedings on debts affected by the refinancing agreement.

The effects of court approval are not limited to extending, in a move away from the principle of relativity of contracts, the effects of the agreed extension. The general effect is protection against revocatory actions, but the extension of effects to dissenting creditors will depend on the percentage of approval. Thus: a) the protection of creditors with collateral is removed; b) the effects of the agreement are adjusted on the basis of the majorities reached in its approval and in relation to whether or not the claim is effectively covered by the collateral.

Creditors with financial claims that have not signed the agreement but are affected by the court approval will maintain their rights over those held jointly and severally liable with the debtor and over sureties or guarantors, who may not invoke acceptance of the refinancing agreement or the effects of the court approval. With regard to financial creditors that have signed the agreement, maintaining its effects for sureties or guarantors will depend on what was agreed in their respective legal relationships.

Any creditor, whether or not they signed the agreement, may request a declaration of non-compliance before the judge that approved it, through the channel of an incidental insolvency proceeding. The judgment cannot be appealed against. If non-compliance is declared, the creditors may call for insolvency proceedings or initiate individual enforcement proceedings.

If collateral rights are enforced on claims affected by the agreement, and unless otherwise agreed, the creditor may take possession of the amounts obtained under certain conditions.

Exemption from unpaid claims for debtors that are natural persons

Law 25/2015 of 28 July 2015 introduced what is known as the ‘second chance’ mechanism to the Insolvency Law, in the new Article 178bis.

The provision exempts natural persons from the general rule of Article 178(2), according to which, in cases of closure of insolvency proceedings due to winding-up or due to the insufficiency of the assets covered by the proceedings, debtors that are natural persons are responsible for payment of the remaining claims.

In order to benefit from this exemption, the debtor must have acted in good faith, for which the following requirements apply:

1. that the insolvency has not been declared culpable;
2. that the debtor has not been convicted by a final judgment of property crime, fraud or white collar crime, falsification, crimes against the tax authority and the social security system or against workers’ rights in the 10 years prior to the insolvency order;
3. that, meeting the requirements laid down in Article 231, the debtor has entered into or at least tried to enter into an out-of-court payment agreement;
4. that the debtor has settled the claims against the insolvency estate and the preferential insolvency claims in full and, if it has not tried to reach a prior out-of-court payment agreement, at least 25 % of the amount of unsecured insolvency claims;
5. that, as an alternative to the previous point:

i) the debtor submits to a payment plan;

ii) it has not failed to comply with the obligations to collaborate with the judge and the administrator;

iii) it has not enjoyed this exemption within the last 10 years;

iv) it has not rejected an offer of employment suitable to its abilities in the four years preceding the insolvency order;

v) it explicitly accepts, in the application for exemption from unpaid claims, that its access to the exemption will be recorded in the special section of the Public Insolvency Register for a period of five years.

Granting this exemption requires proceedings initiated at the request of the debtor and which involve the participation of the administrator and the creditors that are party to the action. The debtor is required to submit a payment plan for the claims that are excluded from the exemption, which must be paid within a maximum period of five years.

Once the period set for complying with the payment plan has elapsed, without the exemption having been revoked, the insolvency judge, at the request of the debtor, will issue an order definitively awarding exemption from claims not paid during the insolvency proceedings. The judge may also, depending on the circumstances of the case and following a hearing with the creditors, order definitive exemption from the unpaid claims of debtors that have not fully complied with the payment plan but have allocated to it at least half of the income received (and not considered unattachable) during the period of five years since the provisional granting of the exemption or a fourth of that income when the debtor meets the circumstances provided for in the legislation on the protection of mortgagors lacking resources, with regard to the income of the family unit and particularly vulnerable family circumstances.

All of the unsecured and subordinated claims that are outstanding on the date of closure of the insolvency proceedings will be affected by the exemption, except for public law and maintenance claims. With regard to claims with special preference, it will affect the part of such claims that could not be settled by enforcement of the collateral.

The exemption may be revoked at the request of any insolvency creditor if, during the five years following its granting, the existence of undisclosed income, assets or rights belonging to the debtor is verified.
Revocation may also be applied for if during the period set for complying with the payment plan: (a) the debtor finds itself in one of the circumstances which, in accordance with the provisions of Article 178bis(3), prevent granting the exemption from unpaid claims; (b) where applicable, the obligation to pay non-exempt debts is not complied with in accordance with the content of the payment plan; or (c) the debtor's financial situation substantially improves due to inheritance, legacy or donation, or games of luck or chance, such that it could pay all outstanding debts without detriment to its maintenance obligations.
If the judge orders revocation of the exemption, the creditors fully recover their entitlement to take actions against the debtor in order to enforce claims that remain unpaid at the closure of the insolvency proceedings.

Closure of insolvency proceedings

The causes for closure of insolvency proceedings are laid down in Article 465 of the Recast Text of the Insolvency Law. Basically, insolvency proceedings are closed due to the following causes:
(a) the insolvency order is revoked by the Provincial Court (*Audiencia Provincial*);
(b) compliance with the arrangement is declared;
(c) it is verified that the assets covered by the proceedings are insufficient to pay the claims against the insolvency estate;
(d) payment of all of the recognised claims or the full satisfaction of the creditors by other means is verified;
(e) once the initial phase is over, all of the creditors abandon or withdraw from the proceedings.
The closure must be approved by the judge and there is a procedure for the parties concerned to contest it. The law has special provisions for the case of closure of insolvency proceedings due to the insufficiency of the debtor's assets when it comes to paying the claims against the insolvency estate. This may be verified with the debtor's own application for proceedings, in which case, the judge will declare the insolvency proceedings and their closure in the same decision and at the same time.
When the closure of insolvency proceedings is declared, all limitations on the debtor's powers come to an end. If the debtor is a natural person, the law lays down special rules for the debtor to enjoy exemption from payment of claims that were not settled during the insolvency proceedings. The requirements for this exemption are laid down in Articles 486 et seq. The debtor must have acted in good faith and must fulfil certain obligations. The debtor itself must apply for this exemption and both the administrator and the creditors may make representations. The exemption may be revoked in certain cases, such as, for example, if the debtor improves its financial situation or if it does not comply with the payment plan which it committed to in order to pay the debts unaffected by the exemption.

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

In the case of closure of the insolvency proceedings of legal persons due to winding-up, they lose their legal personality.
If the closure takes place due to implementation of the arrangement, the creditors will have had their claims paid in accordance with its provisions.
Preferential creditors that did not sign the creditors' arrangement may continue or initiate individual enforcement proceedings, under certain circumstances.
During implementation of the creditors' arrangement, it is also possible for the debtor to lose its legal personality through a process of structural modification, resulting in the assumption of the liabilities by a new company or an acquiring company.
In the case of debtors that are natural persons, closure of insolvency proceedings due to winding-up or the insufficiency of the assets means that the creditors may initiate individual enforcement actions against the debtor, unless it has been exempted from unpaid claims in the manner provided for in Article 178bis.

Reopening insolvency proceedings

If an insolvency order is issued for a debtor that is a natural person within the five years following the closure of previous insolvency proceedings due to winding-up or the insufficiency of the assets, this will be considered a reopening of the earlier proceedings.
In the case of debtors that are legal persons, the reopening of insolvency proceedings that were closed due to winding-up or the insufficiency of the assets will be ordered by the same court that heard the first proceedings, will be processed in the same proceedings and will be limited to the phase of liquidation of assets and rights that appeared subsequently.
In the year following the date of the decision closing insolvency proceedings due to the insufficiency of the assets, the creditors may apply to reopen the proceedings for the purpose of initiating recovery actions, indicating the specific actions to be initiated or providing, in writing, relevant facts that could lead to classification of the insolvency as culpable, except if a judgment were issued on classification in the closed insolvency proceedings.

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

According to Article 242 of the Recast Text of the Insolvency Law, all legal expenses required to apply for insolvency proceedings and to carry them out are claims against the insolvency estate. In particular, this includes all claims arising from legal costs and expenses required to apply for and order insolvency proceedings, the adoption of precautionary measures, the publication of the decisions provided for in this law, and the attendance and representation of the debtor and of the administrator throughout the insolvency proceedings and the incidental proceedings, when their participation is legally mandatory or is in the interests of the insolvency estate, until the arrangement comes into effect or, otherwise, until closure of the insolvency proceedings, except for claims arising from appeals lodged against the court's decisions when they are totally or partially dismissed with an express order to pay the costs.
Also included as claims against the insolvency estate, according to the third paragraph of the same article, are the legal costs and expenses arising from the attendance and representation of the debtor, the administrator or the legitimate creditors at proceedings that, in the interests of the insolvency estate, continue or are initiated in accordance with the content of this law, except for the provisions relating to cases of withdrawal, acceptance, settlement or separate defence of the debtor, and, if applicable, up to the quantitative limits established therein.
In cases of closure of insolvency proceedings due to the insufficiency of the insolvency estate, claims for legal costs and expenses are paid before the rest of the claims against the insolvency estate, with the exception of workers' and maintenance claims (Article 473).
The administrator's fees are claimed against the insolvency estate and are set by the judge in accordance with a legally approved fee scale; at the moment, the fee scale approved by Royal Decree 1860/2004 of 6 September 2004 is still valid. Article 84 lays down special rules for their determination and effect.
The law provides for the possibility of appointing delegated assistants to aid the administrator and their remuneration is covered by the latter.

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

The regulation of revocatory actions in insolvency proceedings is contained in Articles 226 et seq. of the Recast Text of the Insolvency Law. These provisions have undergone successive amendments, mainly in relation to the nature of the '*protective mechanisms*' of the refinancing agreements.
Article 226 contains the legal system for claw-back actions, based on a general clause declaring all acts carried out by the debtor that are 'detrimental to the assets covered by the proceedings' as 'revocable', whether or not there was 'intention to mislead'. In order to safeguard the effects of revocation, a specific period of time is established: the two years prior to the date of the insolvency order.
(A) Revocation period
The law opts for the establishment of a specific revocation period: two years dating back from the date of the insolvency order.

(B) The concept of ‘pecuniary detriment’

Actions carried out during the ‘suspect period’ by the debtor are revocable if they are detrimental to the assets covered by the proceedings. Pecuniary detriment must be satisfactorily proven by the party making the complaint. However, given the difficulties normally entailed in proving detrimental acts, the Insolvency Law facilitates bringing actions through the establishment of a set of presumptions. As happens in other parts of the law, the presumptions may be irrebuttable or rebuttable. Thus: (a) pecuniary detriment is presumed irrebuttable in two cases: (i) when dealing with the free disposal of assets, except donations for use, and (ii) when dealing with payments and other acts settling obligations that fall due after the insolvency order, unless they are secured by collateral, in which case the presumption admits evidence to the contrary; (b) pecuniary detriment is presumed rebuttable in three cases: (i) when dealing with the disposal of assets against payment to persons with a special relationship with the insolvency debtor, (ii) when dealing with the creation of charges on property in favour of pre-existing obligations or in favour of new obligations incurred to replace the former, and (iii) payments or other acts settling obligations secured by collateral and that fall due after the insolvency order.

(C) Procedure

Legal standing to bring revocatory actions in insolvency proceedings falls to the administrator. However, for the purpose of protecting creditors against the inactivity of administrators, the law provides for a subsidiary or second grade legal standing for creditors that have urged the administrator in writing to bring a revocatory action, if within a period of two months since the date of the request the action is not brought by the administrator. The law contains rules aimed at ensuring that administrators effectively carry out the role of ensuring that the assets covered by the proceedings are not disposed of. For actions against refinancing agreements, legal standing is exclusive to the administrator, excluding any subsidiary standing.

In order to protect the refinancing agreements, there are special rules resulting from recent legislative amendments, which define protective mechanisms that make these agreements (approved under certain conditions) resistant to revocatory actions (Article 604 of the Recast Text of the Insolvency Law).

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Insolvency/bankruptcy - France

1 Who may insolvency proceedings be brought against?

Any person exercising a commercial or craft activity, any farmer, any other natural person exercising a self-employed activity, including a liberal profession governed by a legislative or statutory instrument or with a protected title, and any private law entity may be the subject of safeguard (*procédure de sauvegarde*), judicial reorganisation (*procédure de redressement judiciaire*) or judicial liquidation (*procédure de liquidation judiciaire*) proceedings.

Insolvency proceedings may be opened for a sole trader (*auto-entrepreneur*).

Safeguard proceedings can only be opened for a person pursuing an economic activity. In the case of judicial reorganisation or judicial liquidation, the person may already have ceased activity at the time the proceedings are opened.

Private law entities for which insolvency proceedings can be opened include commercial companies, non-commercial companies, economic interest groups, associations, trade unions, professional or trade associations and works councils.

Insolvency proceedings cannot be opened for private law groupings without legal personality such as joint ventures or companies in the course of incorporation.

All legal persons governed by public law are also excluded.

Accelerated safeguard and accelerated financial safeguard proceedings

A debtor may have recourse to accelerated safeguard proceedings (*procédure de sauvegarde accélérée*) or to accelerated financial safeguard proceedings (*procédure de sauvegarde financière accélérée)* if his accounts have been certified by an auditor or were drawn up by an accountant and if he has a workforce of more than 20 employees or turnover excluding taxes of more than EUR 3 million or a total balance sheet of more than EUR 1.5 million.

Accelerated safeguard and accelerated financial safeguard proceedings are also open to debtors who have drawn up consolidated accounts.

2 What are the conditions for opening insolvency proceedings?

Safeguard proceedings are opened if the debtor is experiencing insurmountable difficulties but has not yet reached the stage of cessation of payments.

Judicial reorganisation proceedings are opened if the debtor is unable to meet his current liabilities with his available funds and has reached the stage of cessation of payments.

Judicial reorganisation aims to maintain business activity and jobs and to clear liabilities. The business manager must request this procedure within 45 days of cessation of payments.

Judicial liquidation proceedings are opened when the business has reached the stage of cessation of payments and when judicial reorganisation is clearly impossible.

Only the debtor can request the opening of safeguard proceedings.

In contrast, the opening of judicial reorganisation or judicial liquidation proceedings can be requested not only by the debtor, but also by a creditor or by the public prosecutor, on condition that conciliation proceedings (*procédure de conciliation* – pre-insolvency proceedings) are not in progress.

The judgment opening insolvency proceedings takes effect from the judgment date, i.e. at zero hours on its date of issue.

The debtor is notified of the opening judgment within eight days of its date and is communicated to the insolvency practitioners and to the public prosecutor’s office, including in the other Member States where the debtor has an establishment.

The judgment takes effect immediately in relation to all.

Within fifteen days of its date of issue, the opening judgment is entered in the commercial and company register, the trade register or in a special register kept at the registry of the regional court.

An extract from the judgment is inserted in the Bodacc (official bulletin of civil and commercial announcements) and in a register of legal notices of the place of the debtor’s registered office or business address.

Accelerated safeguard and accelerated financial safeguard proceedings

Accelerated safeguard and accelerated financial safeguard proceedings also exist.

Accelerated safeguard proceedings can be opened at the request of a debtor who has entered into conciliation proceedings and who provides evidence of having drawn up a draft plan to ensure the continued existence of the business.

The fact that the debtor has ceased payments does not constitute an obstacle to opening accelerated safeguard proceedings, provided that this situation does not predate the request to open conciliation proceedings by more than 45 days.
Accelerated financial safeguard proceedings can be opened under the same conditions as those of accelerated safeguard proceedings and where the debtor's accounts show that his debt allows the adoption of a plan solely by the creditors who are members of the credit institutions committee.

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 proceedings cover all the debtor's assets.
In the case of a legal person, only that person's assets are involved.
If the debtor is an individual entrepreneur, his personal assets are also involved.
However, the principal residence of an individual entrepreneur exercising a commercial, industrial, craft or agricultural activity or liberal profession is exempt from attachment by professional creditors by law.
Other land and buildings not used for business purposes may be the subject of a declaration of exemption from attachment. This declaration, which must be notarised and published, has effect only in relation to professional creditors whose claims arise after publication.
Exemption from attachment of the debtor's principal residence by professional creditors serves to protect the debtor and his family.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Disinvestment of the debtor

Safeguard and judicial reorganisation

Where safeguard or judicial reorganisation proceedings are opened, the debtor is not disinvested and continues to manage his business.
Under safeguard proceedings, the court may appoint an administrator to supervise or assist the debtor in his business management, according to the mandate defined by the court in the judgment. In certain cases (businesses with at least 20 employees and turnover excluding taxes of at least EUR 3 million) that appointment is compulsory.
Under judicial reorganisation proceedings, the court may also appoint an administrator (*administrateur judiciaire*) who will assist the debtor in his management or manage the business himself, in whole or in part, in place of the debtor. That appointment is compulsory in the same cases as in safeguard proceedings.

Judicial liquidation

In the case of judicial liquidation proceedings, the debtor is divested of the administration and disposal of his assets. The liquidator (*liquidateur*) exercises his rights and performs actions in relation to his business assets. The liquidator therefore undertakes the administration of his assets.

Insolvency practitioners

Insolvency practitioners are court-appointed representatives placed under the supervision of the public prosecutor's office and are members of regulated professions.
These specialised professionals must be entered on national lists and meet strict conditions as to suitability and good character.
Persons not entered on these lists, but with particular experience or qualifications in the light of the case, may also be designated.
Insolvency practitioners are appointed by the court when proceedings are opened.
Insolvency practitioners could incur civil and criminal liability under ordinary law.
The practitioners' fees are determined by scales fixed by decree; their remuneration under these scales is charged by the court to the debtor.

The powers of the insolvency practitioners and the debtor

Court-appointed administrator

In principle, the court opening safeguard or judicial reorganisation proceedings appoints an administrator, who may be proposed by the debtor under the safeguard proceedings or by the public prosecutor's office.
It is not compulsory to appoint an administrator if the debtor has a workforce of fewer than 20 employees and if his turnover excluding taxes is less than EUR 3 million.
In the case of accelerated safeguard and accelerated financial safeguard proceedings, the appointment of an administrator is always compulsory.
Under safeguard proceedings, the debtor is not disinvested and continues to dispose of and manage his assets, unless the court decides otherwise.
The court-appointed administrator, if one is appointed, supervises or assists the debtor in his business management, according to the mandate defined by the court.
Under judicial reorganisation proceedings, the court-appointed administrator assists the debtor in his management or manages the business himself, in whole or in part, in place of the debtor.
The court-appointed administrator must take, or have the debtor take, the necessary measures to preserve the rights of the business against its debtors and the necessary measures to maintain its production capacity.
The court-appointed administrator is vested with specific powers, such as operating under his signature the bank accounts of a debtor who has been prohibited from issuing cheques, requiring the continuation of current contracts and implementing the necessary redundancies.

Court-appointed receiver

It is compulsory for the court to appoint a receiver (*mandataire judiciaire*) in any collective proceedings.
His task is to represent the creditors and their collective interests.
He draws up the list of declared claims, including wage claims, with his proposals for admission, rejection or referral to the competent court, and forwards the list to the bankruptcy judge.

Liquidator

The court appoints a liquidator in the judicial liquidation order.
The liquidator must verify the claims and realise the debtor's assets in order to pay off creditors.
He implements redundancies and may opt for the continuation of current contracts.
He represents the disinvested debtor and thus exercises most of his rights and performs most of the actions relating to these assets during judicial liquidation proceedings. On the other hand, he may not exercise the debtor's non-pecuniary rights.

5 Under which conditions may set-offs be invoked?

Set-off is a way of extinguishing mutual obligations to the limit of the lower amount.
It can be applied only between two persons with symmetrical mutual claims and debts.
It thus results in a shorter two-way payment between mutual claims.
In principle, it is prohibited for the debtor to pay any claim arising prior to the judgment opening the safeguard or judicial reorganisation proceedings.

However, the prohibition on payment of previous claims is lifted for the payment of related claims by set-off. Reciprocal claims of the same nature arising or deriving from the performance or non-performance of the same contract or group of contracts are considered to be related.
If a claim related to the earlier claim arises after the judgment opening the proceedings, it is possible for it to be paid by set-off against the previous claim, provided that the latter has been declared.

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

Procedure to continue current contracts

The opening of insolvency proceedings does not call into question the existence of the contracts between the debtor and his contracting partners (suppliers, customers) on the day on which proceedings are opened.
A current contract is a contract which exists and is ongoing when the proceedings are opened, a contract of successive performance which has not expired on that date or a contract of instantaneous performance which has not yet been performed but has already been concluded.
The specific provisions relating to current contracts do not apply to employment contracts.

Safeguard and judicial reorganisation

In principle, contracts are continued automatically..
Hence the contracting partner must fulfil his obligations despite the failure of the debtor to perform commitments prior to the opening judgment.
He will be paid on the due date for services provided after the opening judgment.
Only the court-appointed administrator has an option based on public policy which enables him to require continuation of the contract subject to payment for the services to be supplied to him.
In the absence of a court-appointed administrator, the debtor may require performance of the current contracts, with the consent of the court-appointed receiver.
The court-appointed administrator also has the option of terminating the contract to be performed or payment by instalments where he establishes that he does not have sufficient funds to fulfil the debtor's obligations.
The contracting partner may give the court-appointed administrator (or the debtor, in the absence of an administrator) formal notice to decide on the future of the contract.
A current contract is terminated automatically if the court-appointed administrator (or debtor) has not replied to the formal notice after one month.
The same applies in the event of non-payment and in the absence of agreement by the contracting partner to continue contractual relations.
The court-appointed administrator (or the debtor, in the absence of an administrator) may also apply to the bankruptcy judge to pronounce the current contract terminated if termination is necessary to safeguard or rehabilitate the debtor, and on condition that it does not excessively harm the interests of the contracting partner.

Judicial liquidation

As in safeguard and judicial reorganisation proceedings, all current contracts are in principle maintained. Hence the contracting partner must fulfil his obligations despite the failure by the debtor to perform commitments prior to the judgment opening the proceedings.
Services provided after the opening judgment will be paid on the due date.
Only the liquidator can require performance of the current contracts by supplying the service promised to the debtor.
The contracting partner may give the liquidator formal notice to decide on the future of the contract.
The contract is terminated automatically if the liquidator has not replied to the formal notice after one month.
The same applies where performance by the debtor relates to the payment of a sum of money, on the day when the contracting partner is informed of the decision by the liquidator not to continue the contract, as well as in the event of payment default when the contracting partner does not agree to continue contractual relations.
Where anything other than the payment of a sum of money is involved, the liquidator may also ask the bankruptcy judge to pronounce the contract terminated if it is necessary for the liquidation operations and does not excessively harm the interests of the contracting partner.

Assignment of current contracts

In the case of safeguard, judicial reorganisation or judicial liquidation proceedings, if full or partial assignment of the undertaking is ordered, the court may determine the contracts for leasing, rental or provision of goods and services necessary for continuation of the business that are to be assigned.
A contracting partner whose contract was not thus assigned may apply to the bankruptcy judge to declare the contract terminated if its further performance is not required by the administrator, the debtor in the absence of an administrator or the liquidator.

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

In the case of insolvency proceedings, creditors are obliged to enforce their rights against the debtor exclusively under the insolvency proceedings and cannot take individual action for payment against the debtor.
The judgment closing the judicial liquidation proceedings by reason of insufficiency of the assets does not lead to creditors recovering the right to bring individual proceedings against the debtor.
There are exceptions to this rule:
- for actions relating to goods acquired by way of an inheritance arising during the judicial liquidation proceedings;
- where the claim originates in an offence for which the debtor's guilt has been established or where it relates to personal rights of the creditor;
- where the claim originates in fraudulent practices committed to the detriment of social protection agencies. The fraudulent origin of the claim is established either by court decision or by a penalty declared by a social security authority.

The creditors also recover their right to bring individual proceedings in cases where:
- the debtor has been declared personally bankrupt;
- the debtor has been found guilty of fraudulent bankruptcy;
- the debtor, in respect of any one of his assets, or a legal person which he directed, was subject to previous judicial liquidation proceedings closed by reason of insufficiency of the assets less than five years before the opening of the proceedings to which he is subject; the debtor has had debts written off in the five years preceding that date;
- the proceedings were opened as territorial proceedings within the meaning of Article 3(2) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

In addition, in the event of fraud in relation to one or more creditors, the court authorises the resumption of individual proceedings by any creditor against the debtor. The court rules when the proceedings are closed after having heard or duly summoned the debtor, the liquidator and the supervisors. It may hand down a ruling subsequently at the request of any interested party, under the same conditions.

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

The judgment opening insolvency proceedings interrupts or prohibits action brought against the debtor seeking to obtain payment of a sum of money or to cancel a contract on grounds of default of payment of sums of money.
Enforcement proceedings and preservation measures are also stayed.
Action brought by creditors prior to the opening of collective proceedings is interrupted or stayed.
All previous creditors are therefore concerned, whether or not they are secured.
The interruption and prohibition of proceedings apply to all insolvency proceedings.
Proceedings pending are interrupted until the prosecuting creditor has declared his claim.
They are then resumed automatically, but only to confirm the claim and fix its amount, to the exclusion of the judgment against the debtor.
Lawsuits and enforcement proceedings other than the aforementioned are continued while the debtor is under observation, after joinder of the court-appointed receiver and the court-appointed administrator where his duties are to assist or represent the debtor, or after resumption of proceedings on the initiative of the court-appointed receiver or the court-appointed administrator.

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

Safeguard and judicial reorganisation proceedings

With a view to adoption of the safeguard plan, the creditors are consulted on the payment periods or remission of debts.
Proposals are forwarded by the court-appointed administrator (or by the debtor in the absence of an administrator) to the court-appointed receiver representing the creditors.
The court-appointed receiver receives the agreement, individually or collectively, of each creditor having declared his claim.
The court-appointed receiver is not bound to consult creditors for whom the draft plan makes no change to the terms of payment or provides for payment in full in cash as soon as the plan has been adopted or the claims admitted.

Creditors' committees

Where the debtor has a workforce of more than 150 employees and turnover exceeding EUR 20 million, a creditors' committee is set up which will give its opinion on the draft plans to clear the liabilities. The court may also decide to apply these provisions below those thresholds.
The creditors' committees convene different categories of creditors at separate meetings in order to submit to them proposals which they will be able to discuss and on which they will decide collectively, i.e. minority creditors will have to abide by the decision of majority creditors.
There is a credit institutions committee composed of finance companies and credit or similar institutions, and a committee composed of the principal suppliers of goods or services. Where there are bondholders, a general meeting of all creditors holding bonds issued in France or abroad is convened in order to discuss the draft plan adopted by the creditors' committees.
Creditors' committees must be consulted by the court-appointed administrator on the draft plan and vote in favour of a plan before the court can take its decision.
Where creditors' committees exist, any creditor who is a member of a committee can propose alternatives to the draft plan presented by the debtor.
The draft plan might therefore originate with the debtor (possibly with the assistance of the court-appointed administrator), or, in the case of judicial reorganisation, with the administrator with the debtor's assistance, but might also be an initiative by creditors who are committee members. The plan adopted by the committees and, if it is separate, the plan supported by the debtor or the administrator, can then be submitted to the court concurrently.

Accelerated safeguard proceedings

Where accelerated safeguard proceedings are opened, it is compulsory to establish creditors' committees – a credit institutions committee and committee of suppliers of goods and services – and, where appropriate, the general meeting of bondholders.
Creditors who are not committee members are also consulted individually.

Accelerated financial safeguard proceedings

Where accelerated financial safeguard proceedings are opened, only the credit institutions committee, and, where applicable, the general meeting of bondholders need be established.

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

The debtor's assets may be realised by total or partial assignment of the business or in individual assignments. These transactions are subject to different rules.
Assignment of a business is ordered by the court; it is not carried out by the insolvency practitioner.
Assignment of a business may only be partial in the case of safeguard proceedings. It is partial or total in the case of judicial reorganisation or judicial liquidation proceedings.
In such cases, the court hands down a decision setting the period within which takeover offers are to be sent to the court-appointed receiver, the liquidator or the administrator if any. Offers must be in writing and contain certain mandatory items of information.
Individual assignments of assets are subject to different rules.
During the safeguard and judicial reorganisation period, when the debtor is not disinvested, he may continue to dispose of his assets alone subject to the responsibilities of the administrator.
If disposal entailing realisation of the assets does not fall within the day-to-day management of the business, he must obtain prior authorisation from the bankruptcy judge.
During the safeguard or judicial reorganisation plan, the debtor regains full control of his assets.
In judicial liquidation proceedings, the liquidator must obtain the authorisation of the bankruptcy judge to assign assets.
Real estate is sold by court order. The bankruptcy judge sets the reserve price and the basic terms of the sale. He may also authorise a sale by auction at a reserve price that he decides. Finally, he may authorise a private sale at a price and on terms that he determines.
The liquidator then allocates the proceeds of the sales according to the creditor ranking.

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 claims arising before the judgment opening the proceedings must be declared, whatever their nature or character: commercial, civil, administrative (Treasury, social welfare and social security institutions) or penal (fine). It is immaterial whether the claim is unsecured or preferential, due or at term, certain or conditional. These provisions do not apply to employees.
Claims duly arising after the judgment opening the proceedings for the purposes of conducting the proceedings or in exchange for goods or services supplied to the debtor for his business activity are paid on their due date.

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

All creditors whose claim arises prior to the judgment opening the proceedings are required to declare their claims to the court-appointed receiver in the case of safeguard or judicial reorganisation proceedings or the liquidator in the case of liquidation.
The time limit for declaration is two months from the legal publication of the judgment opening the proceedings.

The debtor may also himself declare the claim of one of his creditors under the same conditions.
The declaration also concerns certain claims arising after the judgment opening the proceedings, those for which there is no preferential right to payment for claims benefiting the business or those related to the requirements of the proceedings.
The declared claim must indicate the amount of the sums due and falling due in future, the due dates, the nature of the preferential right or existing security and the rules for calculating interest.
No specific form is required for the declaration of a claim. The declaration must in itself unequivocally express the intention of the creditor to demand payment of his claim, to appear on the statement of claims and to participate in the proceedings.
After having received the debtor's observations, the court-appointed receiver draws up the list of declared claims, with his proposals for admission, rejection or referral to the competent court.
This list is forwarded to the bankruptcy judge and communicated to the court-appointed administrator.
Before admitting or rejecting a claim, the bankruptcy judge verifies its existence, amount and nature, according to the evidence provided by the author of the declaration and, where appropriate, evidence provided by those who are heard and by the court-appointed receiver.
Creditors who have not declared their claims within the time limits are foreclosed and therefore cannot participate in the distribution or claim dividends in the event of adoption of a plan or realisation of the debtor's assets unless the bankruptcy judge lifts foreclosure.
If foreclosure is lifted, they may participate in the distributions subsequent to their application.
Accelerated safeguard and accelerated financial safeguard proceedings
The debtor draws up the list of claims of each creditor having participated in the conciliation proceedings which must be declared. The list is certified by the debtor's auditor and lodged with the court registry.
The court-appointed receiver forwards to each creditor the extract from the list concerning his claim.

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

A preferential creditor enjoys a guarantee ensuring priority of payment over the other ordinary, unsecured creditors of his debtor in the event that collective proceedings are opened against the debtor.
A creditor may thus have preferential status:
- because he is in possession of a guarantee granted by his debtor or obtained from a court decision, or
- because a preferential right is conferred on him by law due to his status.

Preferential creditors are not all equal. Where several preferential creditors compete, they are paid in an order fixed by law, but still before the unsecured creditors.
The unsecured creditors are paid from the debtor's remaining assets, after payment of the preferential creditors. The distribution is carried out on a *pro rata* basis.

The ranking of preferences

Safeguard and judicial reorganisation proceedings

Realisation of the proceeds from the sale of real estate between creditors is undertaken in the following order:
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: costs relating to preservation, realisation of assets and distribution of proceeds among the creditors (inventory and advertising costs, remuneration of court-appointed representatives, etc.).
Claims guaranteed by the conciliation preference: benefits creditors who provide a fresh injection of cash or supply new goods or services with a view to ensuring the continuation and survival of the business.
Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Claims guaranteed by the general preference of employees: payment of the remuneration for six months of work prior to the judgment opening the proceedings.
Claims guaranteed by a special preference or by a mortgage.
Unsecured claims.
Realisation of the proceeds from the sale of movable property between creditors is undertaken in the following order:
Claims guaranteed by a special charge secured on movable property with lien.
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: costs relating to preservation, realisation of assets and distribution of proceeds among the creditors (inventory and advertising costs, remuneration of court-appointed representatives, etc.).
Claims guaranteed by the conciliation preference: benefits creditors who provide a fresh injection of cash or supply new goods or services, with a view to ensuring the continuation and survival of the business.
Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Preference of the Treasury.
Claims guaranteed by a special charge secured on movable property without lien.
Claims guaranteed by other general charges secured on movable property.
Unsecured claims.

Judicial liquidation

Realisation of the proceeds from the sale of real estate between creditors is undertaken in the following order:
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: inventory and advertising costs, remuneration of court-appointed representatives.
Claims guaranteed by the conciliation preference: benefits creditors who provide a fresh injection of cash or supply new goods or services, with a view to ensuring the continuation of the business and its survival.
Claims guaranteed by special charges secured on real estate.

Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Unsecured claims.
Realisation of the proceeds from the sale of movable property between creditors is undertaken in the following order:
Claims guaranteed by a special charge secured on movable property with lien.
'Super preference' of wage claims: payment of remuneration for the last 60 days of work prior to the judgment opening the proceedings.
Court costs duly arising after the judgment opening the proceedings to meet the requirements of conducting the proceedings: inventory and advertising costs, remuneration of court-appointed representatives.
Claims guaranteed by the conciliation preference.
Preference of claims arising after the judgment opening the proceedings: claims arising to meet the requirements of conducting the proceedings or of provisional maintenance of the business, or claims arising in exchange for goods or services supplied to the debtor during the maintenance of the business or to perform a current contract maintained by the liquidator, or claims arising for the everyday needs of the debtor who is a natural person.
Claims guaranteed by a mortgage of goods or claims guaranteed by a pledge on machinery or equipment.
Preference of the Treasury.
Claims guaranteed by a special charge secured on movable property without lien.
Other general preferences on movable property (Article 2331 of the Civil Code (*Code civil*)) and general preference of wages.
Unsecured claims.

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

Safeguard and judicial reorganisation proceedings

Safeguard and judicial reorganisation proceedings were opened for the purpose of rescuing the business, maintaining business activity and jobs and clearing liabilities by means of a plan. A safeguard or judicial reorganisation plan can be adopted only if these conditions are satisfied.
The debtor, in the case of safeguard proceedings, or the administrator, in the case of judicial reorganisation proceedings, or a creditor if creditors' committees have been set up, draws up the draft plan if there is a realistic possibility for the business to be rescued. It consists of three parts:
- an economic and financial part which determines the prospects for turning the business around on the basis of the operational possibilities and methods, market conditions and financial resources available;
- a definition of the terms and conditions for settlement of liabilities and any guarantees that the business manager must provide to ensure its implementation;
- a social part, setting out and justifying the level of, and prospects for, employment and the social conditions envisaged for continuation of the business.

Where the draft provides for redundancies for economic reasons, it will review the steps which have already been taken and define the actions to be carried out to facilitate the re-employment and compensation of employees whose jobs are under threat.
The plan mentions all the commitments which have been entered into by the persons responsible for its implementation and which are necessary for the business turnaround.
The court then rules on the draft plan presented to it by the debtor or a creditor.
The adoption of a safeguard or judicial reorganisation plan or sale plan by the court is a judicial decision. The plan also has a contractual aspect if creditors' committees have been established.
The duration of the plan may not exceed 10 years, or 15 years for farmers.
The court appoints the administrator or receiver to supervise implementation of the plan throughout its duration.
Adoption of the plan ends the observation period. The debtor regains control of his assets and can once again manage his business, subject to the measures which the court has imposed on him in the plan.
The debtor must comply with all aspects of the provisions contained in the plan.
If he fails to do so, in the event of non-fulfilment of his commitments or of cessation of payments occurring during the implementation of the safeguard or judicial reorganisation plan, the debtor runs the risk of cancellation of the plan and resumption of proceedings.

Conversion into judicial liquidation

Judicial liquidation can be pronounced during or at the end of the observation period initiated by a safeguard or judicial reorganisation judgment.
The court must pronounce judicial liquidation as soon as the continuation of the business proves to be impossible or when no sale plan could be adopted under the judicial reorganisation proceedings.

End of the obligations of the natural-person debtor in judicialliquidation

The debtor is disinvested from the day on which judicial liquidation is pronounced until the closure of the liquidation. At that point the rights of the debtor are restored and he can again carry out measures.

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

Completion of implementation of the safeguard or judicial reorganisation plan does not allow creditors who had not declared their claim to take action against the debtor.
The exceptional resumption of individual proceedings is only expressly provided for when the judicial liquidation is closed by reason of insufficiency of the assets.

Time when the insolvency proceedings are considered to be closed

The observation period is the period from the date of the judgment opening the proceedings to the date of the judgment adopting the safeguard or judicial reorganisation plan, or pronouncing judicial liquidation.
Under the safeguard and judicial reorganisation proceedings, business activity continues during the observation period and the debtor continues in principle to manage his business, with certain restrictions.
Where there is a realistic possibility of turnaround of the business, the observation period will end with a safeguard or judicial reorganisation plan.
The adoption of a safeguard or judicial reorganisation plan enables the debtor to recover control of his business, although it does not end proceedings.
Proceedings are closed when the end-of-mission report of the administrator and the court-appointed receiver has been approved by the bankruptcy judge.
The president of the court then issues an order terminating proceedings. This is a judicial administration measure which is not open to appeal.
In judicial terms, the proceedings are therefore closed when the order terminating them is issued.
However, the effects of the proceedings do not end with the order terminating proceedings, since the safeguard or judicial reorganisation plan is still in progress.
The debtor must comply with all aspects of the provisions contained in the plan.

If he fails to do so, in the event of non-fulfilment of his commitments or of cessation of payments occurring during the implementation of the safeguard or judicial reorganisation plan, the debtor runs the risk of cancellation of the plan and resumption of proceedings.

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

Costs and expenses incurred in the proceedings are payable by the business which is the subject of the insolvency proceedings.

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

Where the court opens judicial reorganisation or judicial liquidation proceedings, the date of cessation of payments by the debtor is in principle considered to occur on the date of the judgment opening the proceedings.

However, the court may decide that cessation of payments has occurred on a date up to 18 months before the date of opening the insolvency proceedings. The period from the date of cessation of payments to the date of opening judicial reorganisation or judicial liquidation proceedings is in that case referred to as the 'suspect period'.

Certain acts carried out by the debtor during the suspect period which appear to be fraudulent are annulled.

An action for annulment of the acts carried out during the suspect period comes under the exclusive jurisdiction of the court competent for the proceedings. The action may be brought only by the court-appointed administrator, the court-appointed receiver, the liquidator and the public prosecutor's office.

Creditors may bring an action for annulment of legal acts by the debtor individually, or collectively via the court-appointed receiver.

The act is void in relation to all and cancelled retroactively.

There are twelve cases of compulsory nullity concerning irregular acts:

all acts transferring ownership of movable property or real estate free of charge;

any commutative contract in which the debtor's obligations far exceed those of the other party;

any payment, by whatever method, for debts which are not due on the date of payment;

any payment of debts due, other than in cash, bills of exchange, bank transfers, transfer deeds or any other form of payment commonly accepted in business dealings;

any deposit or any consignment of sums made following the pledge of property, in the absence of a final court judgment;

any contractual mortgage, any legal mortgage, as well as a legal mortgage of spouses, and any right of lien or pledge created on the debtor's assets for debts previously contracted;

any preservation measure, unless the registration or writ of attachment predates the cessation of payment;

any authorisation and exercising of options by the employees of the business;

any transfer of goods or rights to a fiduciary estate, unless this transfer occurred as a guarantee for a debt contracted simultaneously;

any amendment to a trust agreement affecting rights or assets already transferred to a fiduciary estate to guarantee debts contracted prior to this amendment;

where the debtor is an individual entrepreneur with limited liability, any assignment or change to the assignment of an asset, subject to the payment of income not assigned to the business activity, resulting in depletion of the assets covered by the proceedings in favour of another asset of this entrepreneur;

the notarial declaration of exemption from attachment made by the debtor.

These acts must be annulled by the court, whether the parties were acting in good or bad faith.

The court may also annul the acts transferring ownership of movable property or real estate free of charge and the declaration of exemption from attachment undertaken in the six months preceding the date of cessation of payment. These cases are subject to optional annulment.

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Please note that the original language version of this page hr has been amended recently. The language version you are now viewing is currently being prepared by our translators.

Insolvency/bankruptcy - Croatia

1 Who may insolvency proceedings be brought against?

Pre-bankruptcy and bankruptcy proceedings may be brought against legal persons as well as against the assets of an individual debtor unless otherwise specified by law. An individual debtor for the purposes of the Bankruptcy Act (*Stečajni zakon)* – 'SZ') is a natural person subject to income tax from self-employed activity under the provisions of the Income Tax Act (*Zakon o porezu na dohodak*) or a natural person subject to corporate income tax under the provisions of the Corporate Income Tax Act (*Zakon o porezu na dobit)*.

2 What are the conditions for opening insolvency proceedings?

a) Pre-bankruptcy proceedings may be opened if the court establishes the existence of imminent insolvency, i.e. the court concludes that the debtor will be unable to meet their existing liabilities on the date on which they fall due.

Insolvency is deemed to be imminent if the circumstances due to which the debtor is deemed insolvent have not yet arisen and if:

− in the Register of the order of priority of payment liabilities kept by the Financial Agency (*Financijska agencija*), the debtor has one or more registered unsettled liabilities for which there was a valid basis for payment and which should have been collected, without further approval by the debtor, from any of their accounts, or

− the debtor is more than 30 days late with the payment of salaries to employees pursuant to an employment contract, labour regulations, a collective agreement or special regulations, or another document governing the obligations of employers towards employees, or

− the debtor fails to pay within 30 days contributions and taxes for the salaries referred to in the previous subparagraph, counting from the date when they were required to make salary payments to the employees.

b) Bankruptcy proceedings may be initiated if the court establishes the existence of grounds for bankruptcy, i.e. insolvency or overindebtedness.

Insolvency exists if the debtor is continuously unable to settle their outstanding financial liabilities. The fact that the debtor has settled or may be able to wholly or partly settle the claims of some of the creditors does not qualify the debtor as being solvent.

The debtor is deemed insolvent:

− if, in the Register of the order of priority of payment liabilities kept by the Financial Agency, they have one or more registered unsettled liabilities, due for more than 60 days, for which there is a valid basis for payment and which should have been collected, without further approval by the debtor, from any of their accounts

− if they have not paid three consecutive salaries to their employees under an employment contract, labour regulations, a collective agreement or special regulations or another document governing the obligations of employers towards employees.

Overindebtedness is deemed to exist if the assets of the debtor, as a legal person, no longer cover their existing liabilities.

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?

In bankruptcy proceedings, the bankruptcy estate includes the total assets owned by the debtor when the bankruptcy proceedings were opened and the assets acquired by the debtor during the bankruptcy proceedings. The bankruptcy estate is used to settle the costs of the bankruptcy proceedings and claims of the debtor's creditors and claims whose settlement has been secured by certain rights over the debtor's assets.

The free use of assets from the bankruptcy estate by persons previously authorised to represent the debtor according to the law, or by the individual debtor after the opening of bankruptcy proceedings, has no legal effects, save for use that is governed by the general rules upholding the principle of trust in public registers. The consideration is returned to the counter party from the bankruptcy estate if it has increased the value of the bankruptcy estate.

If the individual debtor has gained an inheritance or bequest prior to the opening of or during bankruptcy proceedings, only the debtor is entitled to accept or renounce the inheritance or bequest.

If a debtor forms a co-ownership or any other legal relationship or partnership with a third person, the distribution of assets is conducted outside the bankruptcy proceedings. A separate settlement from the debtor’s share may be requested for the settlement of liabilities stemming from such relationship.

4 What powers do the debtor and the insolvency practitioner have, respectively?

a) Pre-bankruptcy proceedings – the requirements for appointment of a trustee are the same as for the appointment of a liquidator. If it considers it necessary, the court appoints a trustee by its decision on the initiation of pre-bankruptcy proceedings. The trustee’s duties cease on the date of adoption of a decision on the confirmation of a pre-bankruptcy agreement, on the date of the opening of bankruptcy proceedings or by virtue of a decision of creditors.

The trustee in pre-bankruptcy proceedings is required to:

1. examine the business operations of the debtor
2. examine the list of assets and liabilities of the debtor
3. examine the credibility of registered claims
4. contest claims if, on the basis of the statements issued by creditors or some other reasons, they have doubts about their veracity
5. supervise the business operations of the debtor, in particular their financial operations, establishment of liabilities towards third parties, issuing of payment insurance instruments and business activities in the sale of goods or services, while ensuring that the debtor’s assets are not harmed
6. file a complaint to the court if the debtor acts in breach of the provisions of Article 67 of the SZ
7. issue orders and certificates pursuant to Articles 69 and 71 of the SZ
8. ensure that the costs of the prebankruptcy proceedings are settled fully and on time
9. conduct other activities pursuant to the SZ.

From the date when pre-bankruptcy proceedings are opened until their conclusion, the debtor may only make payments that are necessary for their regular business operations. In this period, the debtor may not settle liabilities that were incurred and became due prior to the opening of the pre-bankruptcy proceedings other than gross payment liabilities towards the debtor’s employees and former employees arising from an employment relationship where the claims became due up to the date when the pre-bankruptcy proceedings opened, severance pay up to the amount provided for by law and collective agreements, damage claims due to injury sustained at work or work-related illness, and claims based on employee salaries increased by the amount of base contributions and other substantive rights of employees in accordance with employment contracts and collective agreements that became due following submission of the proposal to open pre-bankruptcy proceedings, as well as other payments necessary for regular business operations as laid down by a special law.

From the date when the proposal to open pre-bankruptcy proceedings is submitted until the decision on opening pre-bankruptcy proceedings is issued, the debtor cannot alienate or encumber their assets except on the basis of prior approval by the trustee, or the court if no trustee has been appointed.

b) Bankruptcy proceedings – the liquidator in bankruptcy proceedings is selected at random from the ‘A’ list of liquidators for the territory covered by the competent court, unless stipulated otherwise in the SZ. Based on this selection, the court appoints the liquidator in the decision on opening bankruptcy proceedings. By way of exception, if a trustee was appointed in the pre-bankruptcy proceedings that preceded the bankruptcy proceedings or if a provisional liquidator was appointed in the bankruptcy proceedings, the court appoints the trustee, or the provisional liquidator, as the liquidator.

The liquidator is vested with the rights and obligations of the corporate bodies of the debtor, unless otherwise specified in the SZ. If the debtor continues to conduct their business operations during the bankruptcy proceedings pursuant to Article 217(2) of the SZ, the liquidator manages the business operations. The liquidator represents the debtor. The liquidator manages only those operations of an individual debtor which concern the bankruptcy estate and represents the debtor with the powers of a legal representative.

The liquidator is obliged to act conscientiously and in an orderly manner, and in particular

1. to put the accounting records in order up to the date of opening of the bankruptcy proceedings
2. to compile a preliminary cost estimate of the bankruptcy proceedings and to deliver it to the committee of creditors for approval
3. to establish a committee for the inventory of assets
4. to compile an initial balance of the debtor’s assets
5. to manage with due diligence the conclusion of the initiated, but unfinished operations of the debtor and the operations necessary for preventing harm to the debtor’s assets
6. to ensure the realisation of the debtor's claims
7. to conscientiously conduct the debtor's business operations referred to in Article 217(2) of the SZ
8. to deliver to the Croatian Pension Insurance Institute the documents related to the labourlaw status of beneficiaries
9. to realise or collect with due diligence the property and rights of the debtor that form part of the bankruptcy estate
10. to prepare distribution to creditors and execute distribution after approval
11. to deliver a final account to the committee of creditors
12. to make subsequent distributions to creditors
13. following the conclusion of the bankruptcy proceedings, to represent the bankruptcy estate in accordance with the SZ.

The liquidator must submit written reports on the course of the bankruptcy proceedings and on the balance of the bankruptcy estate, on a standard form at least once every three months.

5 Under which conditions may set-offs be invoked?

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

If, at the time of the opening of bankruptcy proceedings, there are one or more claims that are to be offset under a suspensive condition, or are not due or are not intended to be performed in the same way, the set-off will occur when the necessary conditions have been met. What does not apply to set-off is the

rule stipulating that outstanding claims become due upon opening of bankruptcy proceedings, and that non-pecuniary claims or claims for an unspecified monetary amount are set at the monetary value at which they are estimated at the time when the bankruptcy proceedings open. If the claim that should be used for set-off becomes unconditional and due before the set-off is possible, set-off is excluded.
A set-off is not excluded for claims denominated in different currencies or units of accounts provided that such currencies or units of accounts can be easily exchanged at the place of settlement of the claim used for the set-off. Conversion is carried out according to the exchange rate valid at the place of settlement at the time when the statement on set-off is received.
A set-off is inadmissible:
1. if the liability of the creditor towards the bankruptcy estate has occurred only after the opening of the bankruptcy proceedings
2. if the claim has been ceded to the creditor by another creditor only after the opening of the bankruptcy proceedings
3. if the creditor has acquired their claim by assignment in the last six months prior to the opening of the bankruptcy proceedings, or if pre-bankruptcy proceedings had not been opened in the last six months prior to the day of the opening of the bankruptcy proceedings, and the creditor knew, or ought to have known, that the debtor had become insolvent, or that a proposal to open pre-bankruptcy proceedings or bankruptcy proceedings had been submitted against the debtor. By way of derogation, the set-off is allowed if the claim was assigned with regard to the fulfilment of an unfulfilled contract or if the right to fulfil the claim has been reacquired by successful challenge against a legal transaction of a debtor.
4. if the creditor has acquired the right to set-off by voidable legal act.

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

If, at the time of the opening of bankruptcy proceedings, the debtor and their counter party to the contract have not performed or have not fully performed a bilaterally binding contract, the liquidator may perform the contract instead of the debtor and demand that the other party perform the contract. If the liquidator refuses to perform the contract, the other party may realise its claim due to default only as a bankruptcy creditor. If the other party to the contract calls on the liquidator to submit their observations on their right to choose, the liquidator must immediately, and no later than after the reporting hearing, notify the other party via registered mail whether they intend to demand the performance of the contract. By way of derogation, if the other party would sustain significant damage by the time of the reporting hearing and it has informed the liquidator thereof, the liquidator is required to notify the other party within eight days via registered mail of whether they will demand the performance of the contract. If they fail to do so, the liquidator will not be authorised to demand performance of the contract.
If the performances owed are divisible, and if the other party has partially fulfilled their performance obligations at the time of the opening of bankruptcy proceedings, then that party is entitled to exercise their right to consideration corresponding to the partial performance as a bankruptcy creditor even if the liquidator has demanded the fulfilment of the remaining part. The other party is not entitled, due to failure to execute their right to consideration, to demand return of the value added to the debtor's assets by their partial performance.
If a reservation has been entered in a land register for the purpose of securing the claim for acquisition or revocation of rights over one of the debtor's properties, or over one of the rights entered in favour of a debtor, or for securing the claim for a change of content or the priority of such right, the creditor may settle their claim as a creditor from the bankruptcy estate. This also applies had the debtor assumed all other liabilities towards the creditor which they afterwards failed to fulfil in full or in part. This provision applies by analogy to reservations in the shipping register, register of ships under construction or the airplane register.
If, prior to the opening of bankruptcy proceedings, the debtor has sold their 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 purchase and sale 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 bankruptcy proceedings, the debtor has bought an immovable property with the retention of title and has received it in possession from the seller, the liquidator has the right of option in accordance with Article 181 of the SZ.
The rent and lease of real property or premises does not cease by the opening of bankruptcy proceedings. This also applies to rental and lease relationships that the debtor has concluded as a lessor related to objects which were, for insurance purposes, transferred to a third person who financed their acquisition or production. Rights that relate to the time prior to the opening of bankruptcy proceedings, as well as to damage incurred by the early termination of the contract, may only be exercised by the other party in the capacity of a bankruptcy creditor.
The liquidator may cancel rent or lease of a real property or premises that the debtor has contracted as a lessee regardless of the contracted term and subject to the legal notice period. If the liquidator declares cancellation, the other party, as a bankruptcy creditor, may seek compensation due to early termination of the contract. If, at the time of the opening of the bankruptcy proceedings, the debtor has not taken over the real property or premises, the liquidator and the other party may withdraw from the contract. If the liquidator withdraws, the other party may, as a bankruptcy creditor, demand compensation for damages due to early termination of the contract. Each party is required, at the request of the other party and within 15 days, to inform the other party of their intent to withdraw from the contract. In the event of failure to do so, the party loses its right to withdrawal.
If the debtor, as the lessor of the real property or premises prior to the opening of the bankruptcy proceedings, held claims relating to rental and lease relations for a future period of time, this has a legal effect in so far as it relates to the rent or lease, for the current calendar month at the time of the opening of bankruptcy proceedings. If the bankruptcy proceedings are opened after the fifteenth day of the month, the holding of claims also has legal effect for the next calendar month and relates specifically to the settlement of rent and lease. Claims held on the basis of enforcement are equivalent to contractual claims.
The liquidator may, on behalf of the debtor as the lessor, cancel the lease or rental relationship within a legal notice period regardless of the contracted notice period.
A third party to whom the liquidator has alienated the real property or the premises which were leased by the debtor, and who therefore enters into a lease or rental relationship instead of the debtor, may cancel that contract within a legally defined notice period.
If the debtor is the lessee, the other party to the contract may not cancel the lease contract after the proposal to open bankruptcy proceedings has been submitted:
1. due to delay in payment of rent or lease incurred prior to the opening of the bankruptcy proceedings
2. due to deterioration of the debtor's financial situation.
The opening of bankruptcy proceedings does not result in the termination of employment contracts or service contracts with the debtor. The opening of bankruptcy proceedings is a special justifiable reason for the cancellation of the employment contract. After the opening of the bankruptcy proceedings, the liquidator, on behalf of the debtor (as employer), and the employee may cancel the employment contract, regardless of the contracted term of the contract and regardless of legal or contractual provisions on the protection of employees. The notice period is one month unless the law provides for a shorter term. If employees consider that the cancellation of their employment contract is not in accordance with the law, they may seek protection of their rights pursuant to the Labour Act (*Zakon o radu*).
The liquidator may, based on the approval of the court, conclude new fixed-term employment contracts without the restrictions that are laid down in the general rules on labour for fixedterm employment contracts in order to finish the business operations already started and to prevent possible damage. The

liquidator specifies salaries and other benefits from employment, based on the court's approval and in accordance with the law and collective agreement. The salaries and benefits from employment to which employees became entitled after the opening of bankruptcy proceedings are settled as liabilities of the bankruptcy estate.
The employees' right of participation ceases with the opening of bankruptcy proceedings. Agreements with the workers' council are not binding on the liquidator.
The debtor's orders related to the assets that form part of the bankruptcy estate cease to be valid upon opening of the bankruptcy proceedings. If the person receiving an order has not been aware of the bankruptcy proceedings through no fault of their own and continues with their activities, the order is considered to be still in force. The claims of a person receiving the order in relation to such continued activities are settled as bankruptcy creditor's claims. The person receiving the order must, for the purpose of remedying damage, continue with their activities after the opening of bankruptcy proceedings until the liquidator assumes the activities. The claims of the person receiving the order related to such activities are settled as claims of creditors from the bankruptcy estate.
Offers made to the debtor or offers made by the debtor cease to be valid on the day of the opening of bankruptcy proceedings unless they have been accepted before that day.
With regard to business contracts with which someone has committed to perform certain services on behalf of the debtor and with regard to the authorisation of the debtor in relation to the assets that enter into the bankruptcy estate and where such authorisation ceases to be valid with the opening of bankruptcy proceedings, the person receiving the order must, for the purpose of remedying the damage, continue with the performance of activities even after the opening of bankruptcy proceedings until the liquidator assumes the performance of activities. The claims of the person receiving the order stemming from the continued activities are settled as the claims of creditors from the bankruptcy estate.
Contractual provisions which, in advance, exclude or limit the application of the provisions of the SZ are without legal effect.

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

a) Pre-bankruptcy proceedings – no enforcement, administrative or security proceedings may be brought against the debtor from the day of the opening of pre-bankruptcy proceedings until their closure. Any such proceedings that are pending are stayed on the day when prebankruptcy proceedings open. The stayed proceedings will continue at the proposal of the creditors:
- following the conclusion of a pre-bankruptcy agreement – in relation to claims or part of claims that were contested in the pre-bankruptcy proceedings
- following a final decision discontinuing the pre-bankruptcy proceedings.

These provisions do not apply to proceedings not affected by the pre-bankruptcy proceedings, or to proceedings for settlement of claims that were incurred after the opening of the prebankruptcy proceedings.
In proceedings before a court in which the stay of the proceedings was ordered due to the opening of pre-bankruptcy proceedings and in which, subsequently, a final decision has been given confirming the pre-bankruptcy agreement that covered the creditor's claim, the court will continue the proceedings and dismiss the action or discontinue the enforcement or security proceedings, except in relation to claims or part of the claims that were contested in prebankruptcy proceedings.
b) Bankruptcy proceedings – after the opening of the bankruptcy proceedings, individual creditors may not seek enforcement or security against the debtor in respect of those parts of their assets that form part of the bankruptcy estate, or against other assets of the debtor. Creditors that are not bankruptcy creditors are not authorised to demand enforcement or security against future claims of individual debtors on the basis of their employment relationship or other service, or their claims on that basis in bankruptcy proceedings, except enforcement or security for settlement of maintenance claims and other claims that may be settled from the part of the debtor's income from employment from which the claims of other creditors may not be settled. Such enforcement and security proceedings pending at the moment of the opening of bankruptcy proceedings are interrupted. Once these proceedings continue, the enforcement court halts proceedings.
After the opening of the bankruptcy proceedings, creditors entitled to seek that parts of the debtor's assets be exempt from insolvency estate (*izlučni vjerovnici*) may, for the purpose of exercising their rights, initiate enforcement and security proceedings against the debtor in accordance with the general rules of enforcement proceedings. Stayed enforcement and security proceedings that the creditors have initiated prior to the opening of bankruptcy proceedings will continue and be executed by an enforcement court in accordance with the rules of the enforcement proceedings.
After the opening of the bankruptcy proceedings, creditors with the right to seek separate satisfaction (*razlučni vjerovnici*) are not authorised to initiate enforcement or security proceedings. The enforcement and security proceedings pending at the moment of the opening of bankruptcy proceedings are stayed. The stayed enforcement and security proceedings are continued by the court that conducts the bankruptcy proceedings by application of the rules on realisation of the items for which there is a right to separate satisfaction in the bankruptcy proceedings.
After the opening of the bankruptcy proceedings, entry in public registers is allowed if the prerequisites for entry have been met before the legal consequences of the opening of bankruptcy proceedings took effect.
Enforcement for the settlement of claims from the bankruptcy estate that are not based on legal acts of the liquidator is not allowed for six months after the opening of the bankruptcy proceedings.
This provision does not apply to:
1. liabilities of the bankruptcy estate from a bilaterally binding contract which the liquidator has undertaken to perform
2. liabilities from a permanent contractual relationship after the expiry of the first deadline by which the liquidator could have cancelled the contract
3. liabilities from a permanent contractual relationship if the liquidator has received consideration in favour of the bankruptcy 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?

a) Pre-bankruptcy proceedings - from the day of the opening of pre-bankruptcy proceedings until their closure, civil proceedings may not be brought against the debtor. Any such proceedings that are pending are stayed on the day of the opening of the pre-bankruptcy proceedings. The stayed proceedings are continued at the proposal of the creditor:
- following the conclusion of a pre-bankruptcy agreement – in relation to claims or part of claims that were contested in the pre-bankruptcy proceedings
- following a final decision discontinuing the pre-bankruptcy proceedings.

These provisions do not apply to proceedings not affected by the pre-bankruptcy proceedings or to proceedings for settling claims that were incurred after the opening of the prebankruptcy proceedings.
In proceedings before a court in which the stay of the proceedings was ordered due to the opening of pre-bankruptcy proceedings and in which, subsequently, a final decision has been given confirming the pre-bankruptcy agreement that covered the creditor's claim, the court will continue the proceedings and dismiss the action or discontinue the enforcement or security proceedings, except in relation to claims or part of claims that were contested in prebankruptcy proceedings.
b) Bankruptcy proceedings - the liquidator will take over the lawsuits, including arbitration proceedings, concerning assets forming part of the bankruptcy estate which were ongoing at the time of the opening of bankruptcy proceedings, acting in the name and on behalf of the debtor. Lawsuits relating to claims that are lodged in the bankruptcy proceedings cannot be continued until they are examined at the review hearing.

The lawsuits pending at the time of the opening of bankruptcy proceedings against the debtor will be taken over by the liquidator in their name where they relate to:
1. exclusion of assets from the bankruptcy estate
2. separate settlement
3. liabilities of the bankruptcy estate.

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

a) Pre-bankruptcy proceedings - creditors of the debtor in pre-bankruptcy proceedings are the persons who, at the time of the opening of pre-bankruptcy proceedings, have pecuniary claims against the debtor. The rules of the SZ laying down the right to vote in bankruptcy arrangements are applied accordingly to the creditors' right to vote on the restructuring plan.
The creditors express their vote in writing on the prescribed voting form. The voting form must be submitted to the court no later than the beginning of the voting hearing and must be signed and certified by an authorised person. If, by the beginning of the hearing, the creditors do not submit the voting form or they submit a voting form from which it cannot be determined unambiguously how they voted, they are deemed to have voted against the restructuring plan.
The creditors present at the hearing vote using the prescribed voting form. If creditors entitled to vote do not vote at this hearing, they are deemed to have voted against the restructuring plan.
Each group of creditors entitled to vote votes separately on the restructuring plan. The rules on classification of participants in bankruptcy arrangements are applied accordingly to the classification of creditors in pre-bankruptcy proceedings.
The creditors are deemed to have accepted the restructuring plan if the majority of all creditors have voted in favour of it and, if, in every group, the sum of all claims of the creditors who voted in favour of the plan is at least double the sum of the claims of the creditors who voted against the acceptance of the plan.
Creditors who have a joint right or whose rights formed a single unified right until the emergence of the grounds for prebankruptcy count as one creditor in the voting. The holders of separate rights or rights of usufruct are treated accordingly.
b) Bankruptcy proceedings - committee of creditors – the court may, in order to protect the interests of creditors in bankruptcy proceedings, prior to the first hearing of creditors, establish a committee of creditors and appoint its members.
Creditors with the claims in the highest amount and creditors with small claims must both be represented in the committee of creditors. Also, a representative of the debtor's former employees must be represented in the committee of creditors unless they as creditors participate in the proceedings with insignificant claims.
Creditors with the right to seek separate satisfaction (*razlučni vjerovnici*) and persons who are not creditors, but who might contribute to the work of the committee with their expert knowledge, may be appointed members of the committee of creditors.
The committee of creditors must have an odd number of members, nine at the most. If the number of creditors is less than five, all creditors are awarded the powers of the committee of creditors.
If, at the review hearing, the recognised claims of the creditors have been determined in a value exceeding HRK 50 million, and the debtor on the day of the opening of bankruptcy proceedings has employment contracts with more than 20 employees, the court is responsible for allowing the creditors to deliver a decision on establishing a committee of creditors.
The committee of creditors must oversee the liquidator and aid them in pursuit of business activities, as well as monitor operations pursuant to Article 217 of the SZ, examine the books and other records related to the business, and order verification of turnover and the amount of cash. The committee of creditors may authorise individual committee members to carry out individual activities within its sphere of responsibilities.
Within its sphere of responsibilities, the committee of creditors will in particular:
1. examine reports by the liquidator on the course of the bankruptcy proceedings and on the condition of the bankruptcy estate
2. review business ledgers and the entire documentation that has been taken over by the liquidator
3. lodge objections with the court against acts of the liquidator
4. grant approval of the cost estimates for the bankruptcy proceedings
5. give the court an opinion on liquidation of the debtor's assets, at the request of the court
6. give the court an opinion on the continuation of ongoing business operations or on the activities of the debtor, at the request of the court
7. give the court an opinion on recognition of justified losses that were established in the inventory of assets, at the request of the court
(3) The committee of creditors must notify the creditors on the course of the proceedings and on the condition of the bankruptcy estate.
The assembly of creditors
The court convenes an assembly of the creditors. The right of participation is granted to all bankruptcy creditors, all bankruptcy creditors with the right of separate settlement, the liquidator and the individual debtor.
At the reporting hearing or any subsequent hearing, the assembly of creditors is authorised to:
1. establish a committee of creditors, if it has not already been established, or to alter its composition or to dismiss the committee
2. appoint a new liquidator
3. decide on the continuation or discontinuation of the debtor's activities and on the manner and terms for liquidation of the debtor's assets
4. order the liquidator to draw up a bankruptcy arrangement
5. adopt any decisions falling within the jurisdiction of the committee of creditors
6. decide on other issues relevant for the implementation and closure of bankruptcy proceedings pursuant to the SZ.
The assembly of creditors has the right to ask the liquidator to submit notifications and reports on the state of affairs and business operations. If no committee of the creditors has been established, the assembly of creditors may order verification of turnover and cash amounts managed by the liquidator.

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

On the opening of bankruptcy proceedings, the rights of the debtor as a legal person expire and are transferred to the liquidator. On the opening of bankruptcy proceedings, the rights of an individual debtor to administer and dispose of assets that form part of the bankruptcy estate are transferred to the liquidator.
After the bankruptcy proceedings have been opened, the liquidator must immediately take over possession and administration of the entire assets of the bankruptcy estate.
The liquidator may, on the basis of an enforcement decision on the opening of bankruptcy proceedings, request the court to order the debtor to hand over assets and to lay down enforcement measures for forcible execution of the order.
The liquidator may, once the decision on the opening of bankruptcy proceedings becomes final, request the court to order third persons who have possession of assets from the bankruptcy estate to surrender those assets. Together with the said request, the liquidator must produce a document showing ownership of the assets. The court takes a decision on the liquidator's proposal after hearing the persons who have possession of assets from the bankruptcy estate.

The liquidator compiles a list of individual assets from the bankruptcy estate. The individual debtor and persons previously authorised to represent the debtor by law must cooperate with the liquidator on this matter. The liquidator must gather the necessary information from the said persons unless this would cause the proceedings to be unduly delayed.
The liquidator compiles a list of all of the debtor’s creditors of which they are aware from the debtor's business ledgers and business documentation, other information from the debtor, lodgement of claims or otherwise.
The liquidator compiles a systematic overview, with respect to the time of the opening of bankruptcy proceedings, stating and comparing the assets from the bankruptcy estate and debtor’s liabilities and their assessment.
The bankruptcy estate inventory, the list of creditors and the overview of assets and liabilities must be presented in the court registry no later than eight days prior to the reporting hearing.
The debtor’s duty under commercial and tax law to keep ledgers and furnish accounts remains unaltered by the opening of bankruptcy proceedings. The liquidator must perform such duties relating to the bankruptcy estate.
The liquidator must, no later than 15 days prior to the reporting hearing, deliver to the court a report on the economic standing of the debtor and the reasons for such standing, which will be published on the court's electronic bulletin board (*e-Oglasna ploča suda*) no later than eight days before the reporting hearing.
After the reporting hearing, the liquidator must, without delay, realise assets forming part of the bankruptcy estate, if this is not contrary to the decision of the assembly of creditors.
The liquidator must realise the assets from bankruptcy proceedings in accordance with the decisions by the assembly of creditors and committee of creditors.

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?

On the opening of bankruptcy proceedings, the rights of the debtor as a legal person expire and are transferred to the liquidator. On the opening of bankruptcy proceedings, the rights of an individual debtor to administer and dispose of assets that form part of the bankruptcy estate are transferred to the liquidator.
After the bankruptcy proceedings have been opened, the liquidator must immediately take over possession and administration of the entire assets of the bankruptcy estate.
The liquidator may, on the basis of an enforcement decision on the opening of bankruptcy proceedings, request the court to order the debtor to hand over assets and to lay down enforcement measures for forcible execution of the order.
The liquidator may, once the decision on the opening of bankruptcy proceedings becomes final, request the court to order third persons who have possession of assets from the bankruptcy estate to surrender those assets. Together with the said request, the liquidator must produce a document showing ownership of the assets. The court takes a decision on the liquidator's proposal after hearing the persons who have possession of assets from the bankruptcy estate.
The liquidator compiles a list of individual assets from the bankruptcy estate. The individual debtor and persons previously authorised to represent the debtor by law must cooperate with the liquidator on this matter. The liquidator must gather the necessary information from the said persons unless this would cause the proceedings to be unduly delayed.
The liquidator compiles a list of all of the debtor’s creditors of which they are aware from the debtor's business ledgers and business documentation, other information from the debtor, lodgement of claims or otherwise.
The liquidator compiles a systematic overview, with respect to the time of the opening of bankruptcy proceedings, stating and comparing the assets from the bankruptcy estate and debtor’s liabilities and their assessment.
The bankruptcy estate inventory, the list of creditors and the overview of assets and liabilities must be presented in the court registry no later than eight days prior to the reporting hearing.
The debtor’s duty under commercial and tax law to keep ledgers and furnish accounts remains unaltered by the opening of bankruptcy proceedings. The liquidator must perform such duties relating to the bankruptcy estate.
The liquidator must, no later than 15 days prior to the reporting hearing, deliver to the court a report on the economic standing of the debtor and the reasons for such standing, which will be published on the court's electronic bulletin board (*e-Oglasna ploča suda*) no later than eight days before the reporting hearing.
After the reporting hearing, the liquidator must, without delay, realise assets forming part of the bankruptcy estate, if this is not contrary to the decision of the assembly of creditors.
The liquidator must realise the assets from bankruptcy proceedings in accordance with the decisions by the assembly of creditors and committee of creditors.

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

a) Pre-bankruptcy proceedings – lodgement of claims is made to the competent unit of the Financial Agency on a standard form accompanied by copies of the documents from which the claim arises or which prove the claim.
The Ministry of Finance – Tax Administration (*Ministarstvo financija – Porezna uprava*) may lodge claims arising from tax, surtax, contributions to compulsory insurance which must by law be taken from earnings and salaries, as well as other claims that they are authorised to collect on the basis of special regulations, apart from claims arising from tax and surtax on income from employment and contributions from the basic amount for persons insured under an employment relationship.
In pre-bankruptcy proceedings, the debtor's employees and former employees and the Ministry of Finance – Tax Administration may not lodge claims from an employment relationship, severance pay up to the amount provided for by law or collective agreement and claims on the basis of compensation of damages due to injury sustained at work or workrelated illness; these claims cannot be the subject of the pre-bankruptcy proceedings. If the applicant has failed to declare these claims in the proposal to open prebankruptcy proceedings or if they have stated them erroneously, the debtor’s employees and former employees and the Ministry of Finance – Tax Administration have the right to lodge an objection.
In their lodgement of claims, creditors with the right to seek separate satisfaction (*razlučni vjerovnici*) are required to provide information on their rights, the legal basis for separate satisfaction and the part of the debtor's assets to which their right of separate satisfaction applies and to make a declaration on whether they waive the right to separate settlement or not.
In their lodgement of claims, creditors entitled to seek that parts of the debtor's assets be exempt from insolvency estate (*izlučni vjerovnici*) are required to provide information on their rights, the legal basis for the right of exemption and the part of assets of the debtor to which their right of exemption applies.
In their lodgement of claims, both these types of creditors (*razlučni vjerovnici* and *izlučni vjerovnici*) must issue a statement on their consent or refusal of consent to suspension of settlement from the assets to which their right to separate satisfaction applies, or suspension of the segregation of assets to which their right of exemption applies, for the purposes of implementing the restructuring plan.
A pre-bankruptcy agreement must not interfere with the right of creditors to separate settlement from assets to which the right of separate settlement applies, unless otherwise provided in that agreement. If the pre-bankruptcy agreement does expressly provide otherwise, it must specify which part of the rights of these creditors is to be reduced, for how long settlement will be deferred and what other provisions of the prebankruptcy proceedings apply to those rights.
If the creditor fails to lodge a claim but the claim has been stated in the proposal to open prebankruptcy proceedings, such a claim is deemed lodged.

The debtor and the trustee, if appointed, must state a position on the creditors' lodged claims. This observation is submitted to the competent unit of the Financial Agency on a standard form, containing the following information for each claim:
1. the number of the claim from the table of lodged claims
2. information for identification of creditors
3. the amount of the claim lodged
4. the statement by the debtor and the trustee, if appointed, recognising or contesting the claim
5. the contested amount of the claim
6. the facts supporting the non-existence of the contested claim or part of the claim.
On expiry of the time limit to state a position on lodged claims, the debtor and the trustee, if appointed, can no longer oppose the claims which they have recognised.
A creditor may contest a lodged claim of another creditor.
Contestation of claim is submitted to the competent unit of the Financial Agency on the standard form and must contain the following information:
1. information for identification of the creditor who is contesting the claim
2. the reference number of the contested claim from the table of lodged claims
3. information for identification of the creditor who lodged the contested claim
4. the amount of the lodged claim being contested
5. a statement by the creditor contesting the claim
6. the contested amount of the claim
7. the facts supporting the non-existence of the contested claim or part of the claim.
The Financial Agency compiles a table of lodged claims and a table of contested claims on a standard form.
b) Bankruptcy proceedings – lodgement of claims is made to the liquidator on a standard form in duplicate accompanied by copies of the documents from which the claim arises or which prove the claim.
The liquidator will draw up a list of all claims of the debtor's employees and former employees up to the opening of bankruptcy proceedings, which must be reported in gross and net amounts; two copies of the lodgement of claims must be submitted for signature.
The claims of lower priority creditors are lodged only at the special invitation of the court. The lodgement of such claims should indicate that they are of low priority and the ranking to which the creditor is entitled.
Creditors entitled to seek exemption (*izlučni vjerovnici*) must inform the liquidator of their right of exemption and the legal basis for such right, and indicate the assets to which this right applies, or indicate in their notification their right to compensation for the right of exemption.
Creditors entitled to separate satisfaction (*razlučni vjerovnici*) are required to inform the liquidator of their right to separate satisfaction and the legal basis for such right, and to indicate the assets to which that right applies. If such creditors also lodge a claim as bankruptcy creditors, they must indicate in their lodgement the part of assets of the bankruptcy debtor to which their right to separate satisfaction applies and the amount by which their claim will foreseeably not be settled by that separation right.
Creditors entitled to separate satisfaction who do not accordingly inform the liquidator of that right do not lose the right to separate settlement. By way of exception, creditors entitled to separate satisfaction do lose their right to separate settlement and are not entitled to seek compensation of damages or any other compensation from a bankruptcy debtor or creditor if the object of the right to separate satisfaction has been realised in the bankruptcy proceedings without them, and the right of separation was not entered in a public register or the liquidator had no knowledge of it or could not have known of it.
The lodged claims are examined with regard to their amounts and order of priority at the review hearing.
The liquidator must respond specifically as to whether they recognise or contest each lodged claim.
The claims contested by the liquidator, individual debtor or one of the bankruptcy creditors have to be reviewed separately. The rights of exemption and the rights to separate satisfaction are not subject to examination.
A claim is deemed established if, at the review hearing, it is recognised by the liquidator and not contested by a bankruptcy creditor, or if a declared contestation is rejected. If an individual debtor contests a claim, this does not prevent establishment of the claim.
The court compiles a table of claims that have been examined in which, for every lodged claim, it enters the amount in which the claim has been established, its order of priority and the person who contested the claim. Contestations of claims by an individual debtor are also entered in the table. The establishment of claim is also indicated by the court on bills of exchange and other documents on debt.
On the basis of the table of examined claims, the court renders a decision determining the amount and ranking of the established or contested individual claims. By virtue of this decision, the court also decides on referral to action for establishing or contesting the claims.
If the liquidator has contested the claim, the court will refer the creditor to bring a lawsuit against the debtor for establishment of the contested claim.
If one of the bankruptcy creditors has contested a claim that was recognised by the liquidator, the court will refer that creditor to bring a lawsuit for establishment of the contested claim. In such a lawsuit the person opposing the claim acts on behalf and for the account of the debtor.
If the claims of the debtor's employees and former employees have been contested, the lawsuit for establishing contested claims is brought in accordance with the general provisions in the proceedings before court and special provisions for proceedings in labour disputes.
If there is an enforcement order for the contested claim, the court will refer the contesting party to bring a lawsuit in order to prove the merits of their contestation.

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

The settlement of creditors is done on the basis of cash flow. Junior creditors are not taken into account in partial distribution. The distribution is carried out by the liquidator. Prior to every distribution, the liquidator must obtain the consent of the committee of creditors or a court, if no committee of creditors has been established.
The highest-ranking senior claims include claims of the employees and former employees of the debtor incurred up to the day of the opening of bankruptcy 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.
Second-ranking senior claims include all other claims against the debtor except claims ranked as junior.
After the settlement of senior claims, the claims ranked as junior are settled in the following order:
1. interest on claims of bankruptcy creditors since the opening of bankruptcy proceedings
2. costs of individual creditors incurred by their participation in the proceedings
3. fines issued for criminal offences or infringements and costs resulting from criminal or infringement proceedings
4. claims demanding the free provision of services of a debtor
5. claims for repayment of loans to replace capital of a member of a company or corresponding claim.

Outstanding claims become due upon the opening of bankruptcy proceedings.
Claims related to a resolutory condition which enters into force upon the opening of bankruptcy proceedings are considered as unconditional claims until such condition enters into force.
The costs of the bankruptcy proceedings and the other obligations of the bankruptcy estate are settled first from the bankruptcy estate. The liquidator settles the claims in the order of their maturity.
Prior to the distribution, the liquidator will draw up a list of claims that will be taken into consideration for the distribution (distribution list). The claims of the debtor's employees and former employees from an employment relationship incurred up to the day of the opening of bankruptcy proceedings are taken into consideration in the gross amount. The list must contain the sum of claims and the available amount from the bankruptcy estate to be distributed among creditors.
A creditor entitled to separate satisfaction to whom the debtor is also personally liable, should within 15 days from announcement of the distribution list at the latest, submit evidence to the liquidator that they have waived the right to separate settlement – and for what amount – or that there has been no separate settlement. If they fail to submit evidence in due time, their claim will not be taken into consideration in the partial distribution.
Claims with a suspensive condition are taken into consideration at their full amount during a partial distribution. The portion related to these claims is reserved during the distribution.
During the final distribution, claims with a suspensive condition are not taken into consideration if the possibility of fulfilment of the condition is so remote that at the time of the distribution it has no material value. In this case, the amounts reserved for satisfaction of this claim during the previous distributions are included in the estate from which the final distribution is to be made.
The creditors excluded from the partial distribution and who subsequently fulfil the conditions stipulated in Articles 275 and 276 of the SZ are paid an amount equal to other creditors from the balance of the bankruptcy estate during the next distribution. Only then will it be possible to continue with the settlement of the claims of other creditors.
The final distribution will commence as soon as the realisation of the bankruptcy estate is completed. The final distribution may be initiated only upon the consent of the court.
If the claims of all creditors can be settled in the full amount in the final distribution, the liquidator will transfer any remaining surplus to the individual debtor. If the debtor is a legal person, the liquidator will assign to each person that has an interest in the debtor the part of surplus that this person would be entitled to in the event of winding-up proceedings outside of bankruptcy proceedings.

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

a) Pre-bankruptcy proceedings – if the creditors accept the restructuring plan, the court will, by virtue of a decision, acknowledge the approval of the restructuring plan and confirm a prebankruptcy arrangement, unless:
− one of the creditors establishes, with sufficient certainty, that the restructuring plan reduces the rights below what they would reasonably be expected to receive in the absence of the restructuring
− it does not appear likely from the restructuring plan that its implementation will allow the debtor to become solvent within the period up to the end of current year and within the two subsequent calendar years
− the restructuring plan has not defined the settlement of amounts that the creditors would receive if their claim were not contested or
− the restructuring plan has proposed capitalisation of claims of one or more creditors and the members of the debtor have not issued a decision consenting to such activity in accordance with the Companies Act (*Zakon o trgovačkim društvima*).
If the conditions for confirmation of pre-bankruptcy arrangement have not been met, the court will, by virtue of a decision, determine that the confirmation of the prebankruptcy arrangement is withheld and stay the proceedings.
A confirmed pre-bankruptcy agreement has legal effect towards the creditors who did not participate in the proceedings and the creditors who participated in the proceedings, and their contested claims are established subsequently.
A debtor who made a profit from liabilities that are written off under a confirmed prebankruptcy agreement must retain such acquired profit until the expiry of the term for fulfilling all liabilities arising from pre-bankruptcy agreement.
Where a creditor writes off a debtor's claim in accordance with a confirmed pre-bankruptcy agreement, the amount of the written-off claim is recognised as tax-deductible expenditure of the creditor.
b) Bankruptcy proceedings - immediately after the final distribution has been concluded, the court issues a decision closing the bankruptcy proceedings that is delivered to the authority that manages the register in which the debtor is registered. On being struck off the register, a debtor that is a legal person ceases to exist and a debtor that is a natural person is deprived of their status as an individual trader, entrepreneur or self-employed person.

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

Bankruptcy creditors may, after closure of the bankruptcy proceedings against an individual debtor, continue with the unlimited pursuit of their remaining claims.
Bankruptcy creditors may enforce their claims against the debtor by virtue of a decision setting out the establishment of their claims, provided that the claims have been established and have not been contested by the debtor at the review hearing. A claim that was unsuccessfully contested is equivalent to an uncontested claim.
On a proposal by the liquidator or any of the creditors, or acting *ex officio*, the court will order the continuation of proceedings for the purposes of subsequent distribution if, after the final hearing:
1. the prerequisites are fulfilled for reserved amounts to be distributed to the creditors
2. amounts that have been paid from the bankruptcy estate are reabsorbed into the bankruptcy estate
3. assets are found that form part of the bankruptcy estate
The court will order continuation of proceedings for the purposes of subsequent distribution regardless of the fact that the proceedings have been closed.
The court may refrain from subsequent distribution and transfer the amount available for distribution to creditors or transfer the object that has been found to the individual debtor if it deems it appropriate in view of the insignificant amount involved or the small value of the object and the costs of continuing the proceedings for subsequent distribution. The court may make continuation of proceedings for subsequent distribution conditional on an advance payment settling the costs of those proceedings.
After implementation of the subsequent distribution, the court will issue a decision on the closure of bankruptcy proceedings.
After the subsequent distribution has been ordered, the liquidator will distribute, according to the final list, the amount that may be freely disposed of or the amount received from realisation of the part of the bankruptcy estate that was subsequently found. The liquidator renders the final account to the court.
The creditors from the bankruptcy estate whose claims the liquidator has learned of:
1. during partial distribution, after the part for distribution has been determined,
2. during final distribution, after the final hearing has been closed,

3. during subsequent distribution, after the list for that distribution has been published,
may demand settlement only from the remaining balance of the bankruptcy estate following the distribution.

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

Each creditor bears their own costs of the proceedings in pre-bankruptcy and bankruptcy proceedings, save as otherwise provided in the SZ.

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

Legal acts undertaken prior to the opening of the bankruptcy proceedings that disrupt the uniform settlement of bankruptcy creditors (causing harm to creditors) or that favour certain creditors over others (preferential treatment of creditors) may be contested by the liquidator on behalf of the debtor, and the creditors in bankruptcy, in accordance with the provisions of the SZ. 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.

A legal act that provides or allows a creditor security or satisfaction in a manner and at a time that is congruent with the substance of their rights (congruent settlement) and that was undertaken within the last three months prior to the filing of a proposal to open bankruptcy proceedings may be contested if, at the time of the act, the debtor was insolvent, and the creditor knew of this insolvency.

A legal act that provides or allows a creditor security or satisfaction in accordance with the substance of their rights may be contested if it was undertaken after the filing of the proposal to open bankruptcy proceedings and if the creditor, at the time of the act, knew of the insolvency or of the proposal to open bankruptcy proceedings.

The creditor is deemed to have known of the insolvency or of the proposal to open bankruptcy proceedings if they knew or ought to have known of circumstances from which it must have been apparent that there was insolvency or that a proposal to open bankruptcy proceedings had been filed.

Persons who were in a close relationship with the debtor at the time of the act are deemed to have known of the insolvency and of the proposal to open bankruptcy proceedings.

A legal act that provides or allow security or satisfaction to a creditor that did not have the right to make a claim, or had no right to make a claim in that manner or at that time, may be contested:

1. if it was undertaken within the last month prior to the filing of the proposal to open bankruptcy proceedings or after the proposal had been filed, or
2. if it was undertaken within the third or second month prior to the filing of the proposal to open bankruptcy proceedings and the debtor was insolvent at the time, or
3. if the act was undertaken within the third or second month prior to the filing of the proposal to open bankruptcy proceedings and the creditor knew at the time the act was undertaken that it would cause harm to the bankruptcy creditors.

A creditor is deemed to have known that the act would cause harm to other creditors if that creditor knew, or ought to have known, of circumstances from which it must have been apparent that creditors would sustain harm. Persons who were in a close relationship with the debtor at the time of the act are deemed to have known that harm would be caused to the bankruptcy creditors.

A legal act of the debtor that directly results in harm to the bankruptcy creditors may be contested:

1. if it was undertaken within three months prior to the filing of the proposal to open bankruptcy proceedings, if the debtor was insolvent at the time of the act and if the other party knew of the insolvency or
2. if it was undertaken after the proposal to open bankruptcy proceedings had been filed and if the other person knew, or ought to have known, at the time of the legal act, of the insolvency or of the proposal to open bankruptcy proceedings.

Any legal act of the debtor that results in the loss of any of the debtor’s rights, or that prevents the assertion of any of debtor’s rights, or any act on the basis of which a pecuniary claim against the debtor may be kept valid or enforced, is treated the same as an act resulting in direct harm being caused to the creditors.

A legal act undertaken by the debtor during the last ten years prior to the filing of the proposal to open bankruptcy proceedings, or thereafter, with the intention of causing harm to creditors, may be contested if the other party knew of the debtor’s intent at the time of the act. Knowledge of intent is presumed if the other party knew that the debtor was under threat of insolvency and that this act would cause harm to the creditors.

The creditor is deemed to have known that the debtor was under the threat of insolvency and that such an act would harm the creditors if that creditor knew, or ought to have known, of circumstances from which it must have been apparent that the debtor was insolvent and that such an act would cause harm to the creditors.

Contracts for pecuniary interest entered into by the debtor and persons close to the debtor may be contested if they cause direct harm to the creditors. Such a contract may not be contested if it was concluded more than two years prior to the filing of the proposal to open bankruptcy proceedings or if the other party proves that, at the time of the conclusion of the contract, it had no knowledge of the debtor’s intentions to cause harm to the creditors.

A legal act of the debtor without compensation or with insignificant compensation may be contested unless it was undertaken four years prior to the filing of the proposal to open bankruptcy proceedings. In the case of an occasional gift of insignificant value, the act may not be contested.

A legal act by which a member of the company makes a claim for repayment of loan used for substituting capital, or some similar claim is void:

1. if it provides security and if the act was undertaken within the last five years prior to the filing of the proposal to open bankruptcy proceedings or thereafter
2. if it guarantees the settlement and if the act was undertaken in the last year prior to the filing of the proposal to open bankruptcy proceedings or thereafter.

A legal act by which the stake of the silent partner of the company is returned to them, in full or in part, or by which their share of the incurred loss is waived, in full or in part, may be contested if the contract on which such an act is based was concluded during the last year prior to the filing of the proposal to open bankruptcy proceedings against the company or thereafter. The same applies if the silent partner is wound up in accordance with the contract.

In the case of congruent settlement, payments by the debtor settled by means of bill of exchange may not be reclaimed from the recipient if, according to the law on negotiable instruments, the recipient would, should they refuse to accept the payment, lose a claim towards other debtors.

A legal act is deemed to have been undertaken at the time when its legal effects have occurred.

If an entry in a public ledger, register or log is required for the legal validity of a legal act, the legal act is deemed to have been undertaken as soon as the other pre-conditions for validity are fulfilled, the debtor’s statement of intent to make such an entry becomes binding, and the other party files a request for entry of a legal change. This provision also applies to requests for an advance entry to secure the right to a legal change.

If a legal act is subject to a condition or a deadline, the time when it was undertaken is taken into consideration, not the time when the condition occurs or the deadline expires.

A legal act for which a writ of execution has been obtained and a legal act undertaken within the enforcement process may be contested.

If the debtor has accepted for their performance a consideration of the same value, which has become directly part of their assets, the legal act underlying this performance may be contested only under the condition of intentional harm.

The liquidator may, on behalf of the debtor, contest legal acts of the debtor on the basis of the court’s approval. The complaint is filed against the person towards whom the contested act was undertaken.

The liquidator may file a complaint to contest legal acts within a year and a half from the day of the opening of bankruptcy proceedings.

Every bankruptcy creditor may bring an action to contest legal acts for their own account and at their own expense if:
- the liquidator has not brought an action to contest the legal acts within the time limit stipulated in Article 212(3) SZ – within three months from expiry of the time limit stipulated in Article 212(3) SZ.
- the liquidator withdraws an action for contesting the legal acts– within three months from the publication of the final decision confirming withdrawal of the action on the court's electronic bulletin board (*e-Oglasna ploča suda*)
- they have previously requested a statement from the liquidator and the liquidator has stated that it will not bring an action to contest the legal acts - within three months from publication of the liquidator's statement on the court's electronic bulletin board
- they have previously requested a statement from the liquidator and the liquidator has not stated within three months whether or not they will bring an action to contest the legal acts - within three months from publication of the call to make such a statement.

If the request to contest legal acts has been granted, the contested legal act will have no legal effect against the bankruptcy estate, and the other party is required to return to the bankruptcy estate all material benefits acquired through the contested transaction, unless otherwise specified by the SZ. An enforcement proposal based on the decision accepting the request to contest legal acts may be filed by the liquidator on behalf and for the account of the debtor or the bankruptcy estate, and by a bankruptcy creditor on their own behalf and in favour of the bankruptcy debtor or bankruptcy estate.
A person accepting performance without compensation, or with insignificant compensation, must return what they have received only if they have been enriched by it, unless they knew, or ought to have known, that such performance would cause harm to the creditors.
A final decision given in an action to contest legal acts is applicable to the bankruptcy debtor, the bankruptcy estate and all bankruptcy creditors, unless otherwise specified by the SZ.
If the court has accepted the request to contest a legal act, the opposing party is required to return to the bankruptcy estate all material benefits acquired through the contested transaction. Once these benefits have been returned to the bankruptcy estate, the creditors who are plaintiffs are entitled to preferential settlement from those benefits in proportion to the amount of their established claims.
The legal acts of the debtor may be contested by submitting an objection within a lawsuit without any time limit.
A legal act may be contested even against the heir or other universal legal successor of the opposing party.
A legal transaction may be contested against other legal successors of the opposing party:
1. if the legal successor, at the time of acquisition, knew of the circumstances on which the voidability of the acquisition of their legal predecessor is based
2. if the legal successor, at the time of acquisition, was a person in a close relationship with the debtor, unless they prove that at the time they did not know of the circumstances on which the voidability of the acquisition of their legal predecessor is based
3. if what was acquired was transferred to the legal successor without compensation, or with insignificant compensation.

A legal act undertaken after the opening of the bankruptcy proceedings that remains valid according to the rules on protection of trust in public registers may be contested according to the rules on contesting legal acts undertaken before the opening of the bankruptcy proceedings.

Last update: 13/02/2023

Please note that the original language version of this page it has been amended recently. The language version you are now viewing is currently being prepared by our translators.

Insolvency/bankruptcy - Italy

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against commercial operators (individuals or companies) provided that they have either:
a) assets of €300 000.00 or more in the three years before the application for insolvency or composition
b) gross annual revenue of €200 000.00 or more in each of the three years before the application for insolvency or composition
c) 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?

a) insolvency requires that the undertaking is insolvent; it can be applied for by:
- the debtor
- a creditor
- the Public Prosecutor

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 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?

All assets form part of the insolvency estate, except for the following:
1) strictly personal property and rights;
2) maintenance allowances, wages, pensions, salaries and what insolvents earn in their work within the limits of what is necessary to support themselves and their family;
3) income from the assets of an insolvent's children, available to him/her by operation of law, assets in funds set aside for the needs of the family (*fondo patrimoniale*) and the income from them, except as provided for by Article 170 of the Civil Code;
4) items that may not be attached by law.

The insolvency estate also includes all assets acquired by the insolvent after the proceedings are opened, but does not include the liabilities incurred in order to acquire and keep those assets.

4 What powers do the debtor and the insolvency practitioner have, respectively?

The insolvency practitioner (administrator) has the power/duty to manage the assets, sell them, and distribute the proceeds to the creditors.
The insolvent can be questioned by the administrator to reveal information and can challenge measures taken by the administrator and the court-appointed receiver, but only if they were adopted in breach of the law (not, therefore, merely for reasons of expediency).

5 Under which conditions may set-offs be invoked?

Anyone who has to pay money to the insolvency practitioner 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 proceedings were opened.

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

The administrator can decide whether contracts in force when the insolvency proceedings were opened should continue or be terminated.

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

Creditors can take legal action after the opening of the insolvency proceedings only if the administrator fails to act, i.e. (knowingly or merely through negligence) does not take such action.

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

Lawsuits started by a creditor against a person who is subsequently declared insolvent may only be continued by the administrator.

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

The creditors' committee is made up of three or five creditors and has significant powers in that it:

- authorises transactions, compromises, the abandonment of lawsuits, the recognition of the rights of third parties, the cancellation of mortgages, the return of securities, the release of bonds, the acceptance of inheritances and gifts, and all other acts of special administration
- applies to the court for the replacement of the administrator
- approves the liquidation plan
- authorises the administrator to take over contracts in force on the date of the insolvency declaration
- attends inventory operations on the insolvent's assets
- accesses all documents relating to the proceedings
- authorises the administrator to exclude from the assets, or to abandon the liquidation of, one or more assets if liquidation appears manifestly disadvantageous
- applies to the court-appointed receiver for the suspension of the sale of assets.

In addition to the above active administrative powers, the creditors' committee expresses opinions on measures taken by the court-appointed receiver or the court, namely:

- authorising secured creditors to sell assets held as security
- authorising the court-appointed receiver to continue running the company temporarily (the creditors' committee must approve the continuation)
- authorising the court-appointed receiver to lease the business (the creditors' committee must approve the lease).

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

The administrator may (subject to prior authorisation):

- continue to run the company
- lease the business
- sell all the assets in order to distribute the proceeds to the creditors
- decide not to sell low-value assets.

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?

Any creditor can apply to the court to have the debtor declared insolvent. It is not necessary for the creditor to have an enforcement order; what is important is that there is documentary evidence for the claim.

All creditors (thus including those who applied for and obtained the insolvency declaration) must apply for their claims to be admitted after the opening of the insolvency proceedings,.

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

Creditors can submit their claims without legal representation.

Their applications must include the documentary evidence for the claim and must be submitted electronically (using certified electronic mail)

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

The proceeds from the sale of the assets are distributed among all the creditors in order of priority. The law gives priority rights to many claims (mortgages, securities, general or special preferential claims) over some or all of the assets.

If (as almost always happens) the proceeds of disposal are insufficient to meet all the claims, they are distributed not in proportion to the amount of the claim but in the order of priority laid down by the Civil Code.

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

Insolvency proceedings are closed when:

- no claims have been submitted
- all claims have been met
- the entire proceeds of the sale of the assets have been distributed
- it is ascertained that there are no assets to sell or other proceeds.

Once the insolvency proceedings are closed, the insolvent regains the capacity to initiate and respond to legal action, and can acquire assets without the knowledge of the administrator.

Arrangements with creditors are closed when the agreement between the debtor and the creditors is approved but, when the agreement requires the disposal of assets (*concordato liquidatorio*), the procedure continues for the sale and, therefore, is concluded once all the assets have been sold and the proceeds have been distributed to the creditors.

Once an arrangement with creditors is closed, an insolvent is released from all his or her debts.

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

Once insolvency proceedings are closed, creditors can take action against the debtor to recover the residual debt (i.e. the portion of the debt that was not repaid by the administrator), unless a discharge procedure has taken place, in which case the creditors cannot claim anything from the insolvent.

Once an arrangement with creditors is closed, creditors cannot claim anything from the debtor. However, if the debtor fails to meet his or her obligations, the creditors can apply for the termination of the arrangement; the application must be made within one year.

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

The costs of insolvency proceedings are borne by the insolvency proceedings themselves, and paid out of the proceeds from the sale of the assets.

If there are no assets, the administrator and the costs incurred by the administrator are paid for by the State.

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

Legal acts carried out by the insolvent before the opening of the insolvency proceedings can be revoked if they were carried out within a certain period (one year or six months) before the opening of the proceedings.

Legal acts carried out by the insolvent after the opening of the insolvency proceedings are void.

Acts of special administration carried out during arrangements with creditors and without the court's permission are void.

Last update: 21/07/2022

Insolvency/bankruptcy - Cyprus

1 Who may insolvency proceedings be brought against?

Bankruptcy (*ptóchevsi*): A bankruptcy order (*diátagma ptóchevsis*) is made only against a natural person who is insolvent.

Winding up (*ekkathárisi*): A winding-up order (*diátagma ekkathárisis*) is made in respect of any legal person. A voluntary winding up (*ekoúsia ekkathárisi*), out of court or subject to court supervision, likewise relates to a legal person.

2 What are the conditions for opening insolvency proceedings?

Bankruptcy: The legislative provisions on the bankruptcy of natural persons are to be found in the Bankruptcy Law (*perí Ptóchevsis Nómos*, Chap. 5) which has been amended substantially in the last two years in order to reflect the changing economic and social situation.

A bankruptcy petition may be presented either by a creditor or by the debtor himself or herself, for debts of more than EUR 15 000, provided that an act of bankruptcy has been committed and that the debtor was in Cyprus in person or was habitually resident in Cyprus or carried on business in Cyprus or was a member of a firm or partnership that carried on business in Cyprus.

A debtor commits an act of bankruptcy (*práxi ptóchevsis*), inter alia, where:

(a) a creditor secures a final judgment against him or her, for any amount, and the debtor fails to pay;

(b) he or she submits a declaration of inability to pay his her debts;

(c) he or she submits a bankruptcy petition;

(d) a personal repayment plan to which he or she was party is considered to have failed or to have been terminated in accordance with the provisions of the Law regarding the Insolvency of Natural Persons (*perí Aferengyótitas Fysikón Prosópon Nómos*).

Winding up of companies: A company may be wound up either because it is unable to pay its debts or by means of a special resolution of the company for it to be dissolved through the liquidation of its property and the repayment of all or part of its debts. A windingup order can be made if a company is unable to pay its debts. The amount due must exceed EUR 5 000. A petition for winding up is submitted to the court either by a creditor or by the shareholders.

Voluntary winding up:

There are three kinds of voluntary winding up:

Creditors' voluntary winding up *(ekoúsia ekkathárisi apó pistotés)*: This is an outofcourt winding up that takes place if the company is **insolvent** and its board of directors decides to wind it up. A creditors' voluntary winding up starts with the convening of a meeting of creditors to consider a special resolution for voluntary winding up that has been passed by the general meeting of the company's shareholders.

Members' voluntary winding up *(ekoúsia ekkathárisi apó méli):* This is likewise an outofcourt winding up, which is initiated by special resolution of the general meeting of the shareholders when the company is **solvent.**

Voluntary winding up subject to the supervision of the court *(ekoúsia ekkathárisi ypó tin epopteía tou Dikastiríou): W*hen a company has passed a resolution for voluntary winding up, the court may make an order that the winding up is to proceed under court supervision.

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?

Bankruptcy: The bankruptcy estate consists of all property which belongs to or is vested in the bankrupt at the commencement of the bankruptcy proceedings or which is acquired by or devolves upon the bankrupt before his or her discharge, other than the property indispensable for the bankrupt's survival and that of his or her family.

Property acquired after the commencement of bankruptcy proceedings and before discharge from bankruptcy or annulment of the bankruptcy forms part of the bankruptcy estate.

Winding up: The property within the scope of the liquidation is the property that belonged to the company before the winding-up order was made or before the date of the special resolution for voluntary winding up.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Bankruptcy: When a bankruptcy order is made, the official receiver (*epísimos paralíptis*) becomes the administrator of the bankrupt's property. At a later stage, any licensed insolvency practitioner (*adeiodotiménos sýmvoulos aferengyótitas*) may be appointed administrator (*diacheiristís*). The administrator's task is to sell the bankrupt's property and to distribute the proceeds to the creditors. When the official receiver or any insolvency practitioner undertakes the duties of administrator, the bankrupt retains ownership of all of the property vested in him or her, which, however, will be managed solely by the administrator from the date of commencement of the bankruptcy proceedings.

Winding up: When a winding-up order is made, if no liquidator is appointed by the creditors, the official receiver automatically becomes liquidator (*ekkathariστís*), unless a licensed insolvency practitioner is appointed as liquidator on the application of the official receiver to the court, or following a decision by the meetings of creditors and contributories of the company. The liquidator's task is to realise the property of the company being dissolved and to distribute the proceeds to its creditors and contributories. Once the official receiver or insolvency practitioner undertakes the duties of liquidator of the property of the legal entity in liquidation, even though the company retains ownership of all of the property vested in it, the property is managed by the liquidator, for the purpose of realising it, from the date of commencement of the winding-up proceedings.

Voluntary winding up: In the case of voluntary winding up, the company ceases, from the commencement of the winding up proceedings, to carry on its business, except in so far as necessary for its beneficial winding up. The task of the liquidator is to realise the property of the liquidated company and to distribute the proceeds to the creditors and contributories.

***Creditors' voluntary winding up*:** The creditors and the company nominate, at their separate meetings, the insolvency practitioner they wish to appoint as the company's liquidator, but in case of disagreement between the two meetings the person appointed as liquidator is the insolvency practitioner nominated by the creditors.

Members' voluntary winding up*:* The company appoints as liquidator, by decision of the general meeting, a licensed insolvency practitioner, who takes responsibility for settling the company's affairs and distributing its property. Upon the appointment of a liquidator the powers of the directors cease, except to the extent that a general meeting of the company or the liquidator approves their continuation.

Voluntary winding up subject to the supervision of the court: When making an order for winding up subject to supervision, the court may by that order or a subsequent order appoint an additional liquidator. A liquidator appointed by the court has the same powers, is subject to the same obligations and stands in the same position as a liquidator appointed by a special resolution or by a decision of the creditors as described above.

5 Under which conditions may set-offs be invoked?

Bankruptcy: The legislation provides that a set-off may be invoked where there are mutual credits or mutual debts or other mutual dealings between the bankrupt and any other person prior to the making of the bankruptcy order, unless at the time of giving credit the other person was aware of the act of bankruptcy committed by the bankrupt.

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

Bankruptcy: Existing lawful contracts to which the bankrupt is a party remain in force and the bankrupt remains personally responsible for complying with their terms.

Winding up: Existing lawful contracts to which a company in liquidation is party remain in force. The same applies to lawful contracts concluded by companies which are being wound up voluntarily.

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

Bankruptcy: Where an action is brought against a bankrupt after a bankruptcy order is made, the leave of the court must be obtained to allow the action to proceed.

Winding up: Where an action is brought against a company in liquidation after a windingup order is made, the leave of the court must be obtained to allow the action to proceed.

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

Bankruptcy: Actions already pending against a bankrupt continue normally without needing the court's leave to allow them to proceed.

Winding up: Actions already pending against a company in liquidation can proceed only with the court's leave. The handling of such actions becomes a matter entirely for the official receiver or the company's liquidator.

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

Bankruptcy: To take part in *bankruptcy* proceedings a creditor must have completed the forms for proof of debt (*epalíthevsi chréous*) and supplied all the supporting evidence. The official receiver or the insolvency practitioner who acts as administrator then decides to admit or reject the proofs. Subsequently, a dividend is paid to creditors in the order of priority laid down in the Bankruptcy Law. Once their proofs have been entered, creditors can participate in meetings convened by the official receiver or the insolvency practitioner liquidating the company**.**

Winding up: To take part in windingup proceedings a creditor must have completed the forms for proof of debt and supplied all the supporting evidence. The same procedures apply as in the case of bankruptcy, except that here the dividend is distributed in accordance with the Companies Law (*perí Etaireión Nómos*, Chap. 113).

The same applies to voluntary winding up, and in particular to creditors' voluntary winding up, where creditors participate directly from the beginning of the proceedings, when they are convened to propose a liquidator of their choice.

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

Bankruptcy: The administrator has the power and authority to sell immovable property in any manner that he or she considers to be appropriate and in the interests of the proceedings. Subsequently, a dividend is paid to creditors in the order of priority laid down in the Bankruptcy Law. In the case of mortgaged property, a court order must be obtained.

Winding up: The liquidator of a company in liquidation may sell the company's immovable property in any manner that he or she considers to be in the interests of the proceedings. Subsequently, a dividend is paid to the creditors following the order of priority laid down in the Companies Law. In the case of mortgaged property, a court order must be obtained. The same rules apply to voluntary winding up.

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?

Bankruptcy: When a bankruptcy order is made, creditors may submit proof of debts which had arisen up to the date of the bankruptcy or winding-up order and which relate to claims of a fixed amount. Claims that arise after the bankruptcy order is made fall outside the scope of the bankruptcy proceedings and creditors must take action against the bankrupt himself or herself.

Winding-up: After a winding-up order is made or a special resolution for voluntary winding up is passed, creditors may submit proof of debts which had arisen up to the date of the windingup order or special resolution and which relate to claims of a fixed amount. Claims which arise after the winding-up order or special resolution fall outside the scope of the winding-up proceedings and creditors must take action against the officers of the company in liquidation.

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

Bankruptcy: When a bankruptcy order is made, each creditor must, within 35 days of the date of publication of the order, submit proof of debt to the official receiver or administrator in writing. The proof must give details of the debt, state the names of all guarantors and indicate whether the creditor has security. The official receiver or administrator must, within 10 days, admit or reject the proof, in writing, for purposes of the dividend. A creditor or guarantor who is unhappy with the decision of the official receiver or administrator may challenge it in court within 21 days.

Winding up: When a winding-up order is made, each creditor must, within 35 days of the date of publication of the order, submit proof of debt to the official receiver or liquidator in writing. The proof must give details of the debt, state the names of all guarantors and indicate whether the creditor has security. The official receiver or liquidator must, within 10 days, admit or reject the proof, in writing, for purposes of the dividend. A creditor or guarantor who is unhappy with the decision of the official receiver or liquidator may challenge it in court within 21 days. The same rules apply to voluntary winding up.

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

Bankruptcy: When the bankruptcy estate is distributed the debts are ranked equally and in proportion within each category (the 'pari passu rule'), unless the estate is sufficient to pay everyone in full. Claims are ranked as follows:

Actual outlays and remuneration of the administrator
Fees due to the official receiver
Expenses incurred by a creditor who is a petitioner
Preferred debts
Unsecured debts

Winding up: When the liquidation estate is distributed the debts are ranked equally and in proportion within each category (the 'pari passu rule'), unless the estate is sufficient to pay everyone in full. Claims are ranked as follows:

Actual outlays and remuneration of the liquidator
Fees due to the official receiver or liquidator
Expenses incurred by a creditor who is a petitioner
Preferred debts
Floating charges
Unsecured creditors

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

Bankruptcy: The bankrupt may submit a written proposal for a composition (*symvivasmós*) with his or her creditors to the official receiver or administrator. A meeting of creditors is held at which the scheme must be approved by a majority in number and three quarters in value of all creditors who have proved their

debts. If the creditors accept the proposal, the bankrupt or the official receiver or administrator asks the court to approve it. Approval by the court binds all creditors who have proved their debts. When the terms of the composition are met, proved debts are deemed to have been satisfied in full.
Complete closure of bankruptcy proceedings takes place when the bankruptcy order is annulled.
Winding up: Complete closure of winding-up proceedings takes place upon final dissolution or when the winding-up order is annulled.
Voluntary winding-up proceedings are closed and the liquidated company is finally dissolved three months after delivery to the official receiver of the company's final accounts, which are drawn up following the completion of any liquidation and distribution of the company's property.
However, if anyone has a legal interest in reviving a company that has been dissolved following voluntary winding up or by court order, they may do so within the two years following the dissolution, by making an application to that effect to the court.

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

Bankruptcy: In the event of annulment of the bankruptcy order, where the creditors have given their consent without having received full payment, such creditors have the right to claim the amounts owed after the annulment of the order.
Winding up: In the event of annulment of the winding-up order, where the creditors have given their consent without having received full payment, such creditors have the right to claim the amounts owed after the annulment of the order.
If anyone has a legal interest in reviving a company that was dissolved following voluntary winding up or by court order, they may do so within the two years following the dissolution, by making an application to that effect to the court.

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

Bankruptcy: The cost of the making of the bankruptcy order is borne by the creditor who lodges a petition for the order. The expenses payable to the official receiver amount to EUR 500. The expenses incurred during the bankruptcy proceedings are paid from the bankruptcy estate.
Winding up: The cost of the making of the winding-up order is borne by the creditor who lodges a petition for the order. The expenses payable to the official receiver amount to EUR 500. The expenses incurred during the proceedings for winding up, liquidation and distribution of the company's property are paid from the liquidation estate.
The cost of the submission and registration of documents relating to voluntary winding-up proceedings with the official receiver amounts to a total of approximately EUR 440. The expenses incurred during the proceedings for winding up, liquidation and distribution of the company's property are paid from the liquidation estate.

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

Bankruptcy: Certain provisions that apply to bankruptcy proceedings permit the administrator to apply to the court in order to claim the recovery of property for the benefit of the creditors. The main provisions are the following:
A. Fraudulent transfer (*dólia metavívasi*):
If the administrator or liquidator has evidence that property of a company or natural person has been transferred either without consideration or substantially below its real value, he or she may apply to the court for an order setting aside the fraudulent transfer or act.
In order for this provision to apply, the transfer must have taken place: (a) within three years before the date of a bankruptcy, unless it was in good faith and against valuable consideration, or (b) within ten years before the date of a bankruptcy, where at the time of the transfer the natural person concerned was unable to pay all of his her debts without the aid of the property transferred. In the case of a company in liquidation, in order for an act to be considered fraudulent it must have been committed within six months before the commencement of the winding up, which is the date on which the petition for winding up was presented.
B. Fraudulent preference (*dólia protímisi*):
If the administrator or liquidator has evidence that a creditor received preferential treatment, he or she may apply to the court for a decision setting aside that treatment.
Winding up: Certain provisions that apply to winding-up proceedings permit the liquidator to apply to the court in order to claim the recovery of property for the benefit of the creditors. The main provisions are the following:
A. Fraudulent transfer:
If the administrator or liquidator has evidence that property of a company or natural person has been transferred either without consideration or substantially below its real value, he or she may apply to the court for an order setting aside the fraudulent transfer or act.
In order for this provision to apply, the transfer must have taken place: (a) within three years before the date of a bankruptcy, unless it was in good faith and in against valuable consideration, or (b) within ten years before the date of a bankruptcy, where at the time of the transfer the natural person was unable to pay all of his or her debts without the aid of the property transferred. In the case of a company in liquidation, in order for an act to be considered fraudulent it must have been committed within six months before the commencement of the winding up, which is the date on which the petition for winding up was submitted.
B. Fraudulent preference:
If the administrator or liquidator has evidence that a creditor received preferential treatment, he or she may apply to the court for a decision setting aside that treatment.

Last update: 07/12/2023

Insolvency/bankruptcy - Latvia

1 Who may insolvency proceedings be brought against?

The Insolvency Law laying down insolvency proceedings in Latvia is applicable to legal and natural persons which may be subject to insolvency proceedings set out in this Law.
The Insolvency Law lays down three types of insolvency proceedings: legal protection proceedings (reorganisation proceedings), insolvency proceedings of a legal person, and insolvency proceedings of a natural person.
Please note that the Insolvency Law does not apply to insolvency proceedings of credit institutions which are governed by the Law on credit institutions.
Legal protection proceedings (including out-of-court legal protection proceedings (pre-pack)) is a debt restructuring procedure that can only be applied to legal persons. It should be noted that the scope of legal protection proceedings does not include specific financial and capital market operators, such as insurance, insurance broker and investment broker companies, private pension funds, etc.
Insolvency proceedings of a legal person is a procedure for the liquidation of a debtor (a legal person) and is applicable to legal persons, partnerships and sole traders. Partnerships do not have the status of a legal person, but they can acquire rights and assume liabilities. A natural person with the status of a

sole trader may enter into commercial transactions (using the name of the sole trader), and into other economic transactions as a natural person. Currently, a person with the status of a sole trader is first subject to insolvency proceedings of a legal person, following which the individual may file an application for insolvency proceedings of a natural person in respect of any remaining liabilities. The solution for sole traders is also applicable to farming and fishery establishments.

Insolvency proceedings of a natural person are applicable to natural persons, including economic operators and consumers, and are intended to help relieve debtors of their debt and restore solvency. Any natural person who has been a tax payer in Latvia for the past six months may be subject to insolvency proceedings of a natural person.

2 What are the conditions for opening insolvency proceedings?

Legal protection proceedings

Pursuant to the Insolvency Law, an application for legal protection proceedings can only be filed by the debtor when financial difficulties have arisen or are expected to arise. The Insolvency Law does not define any specific indicators, the presence of which would entitle the debtor to apply for legal protection proceedings. When financial difficulties arise, the debtor must assess whether the degree of the financial difficulties permits reaching an out-of-court agreement with the creditors, or they need to apply for legal protection proceedings to restructure their liabilities under judicial protection.

Application for legal protection proceedings is subject to the payment of a State fee of EUR 145.

Insolvency proceedings of a legal person

In cases laid down in the Insolvency Law, both the debtor and the debtor's creditors (including the debtor's employees) may request the opening of insolvency proceedings of a legal person. Likewise, an application for insolvency proceedings of a legal person may be filed by the person referred to in Article 37(1)(a) of Regulation 2015/848 of the European Parliament and of the Council.

The Insolvency Law lays down cases where the debtor is under obligation to immediately file an application for insolvency proceedings of a legal person. Failure to file an application for insolvency proceedings incurs administrative liability for the debtor. The debtor is under obligation to file an application for insolvency proceedings of a legal person in the following cases:

- the debtor has failed to settle a debt the due date of which has expired more than two months ago, and has failed to reach a debt extension agreement with the creditors, or no legal protection proceedings have been initiated (it is important to stress that the initiation of legal protection proceedings is not a pre-condition for filing an application for insolvency proceedings of a legal person; the provision only relieves the debtor of administrative liability if they have attempted to resolve their financial difficulties when they occurred, but have became insolvent);
- according to the initial financial report under liquidation procedure, the debtor has insufficient assets to satisfy all justified claims of creditors, or this condition is discovered in the course of liquidation procedure;
- the debtor is no longer able to comply with the plan of measures of the legal protection proceedings.

A creditor is entitled to file an application for insolvency proceedings if:

- a court ruling for the recovery of debt from the debtor could not be executed by enforcement measures;
- the debtor (a limited liability company or a joint stock company) has not settled a principal debt amounting to EUR 4 268, and the creditor has notified them of their intention to file an application for insolvency proceedings of a legal person;
- the debtor (a legal person other than a limited liability company or a joint stock company) has not settled a principal debt amounting to EUR 2 134, and the creditor has notified them of their intention to file an application for insolvency proceedings of a legal person;
- the debtor has failed to pay an employee their full wages, compensation for damages in connection with an accident at work or an occupational disease, or has failed to make the mandatory social insurance contributions within two months of the set day of payment (unless the day of payment is laid down in the employment contract, the day of payment shall be deemed to be the first working day of the following month). In the event of this, the amount of the outstanding payment is not relevant.

The court declares the opening of insolvency proceedings of a legal person if on the day of examining the application it finds that the indicator referred to in the application exists.

It is important to note that, upon filing an application for insolvency proceedings, both the debtor and the creditor must pay a State fee, i.e. an operational fee for the examination of the application by a court. The fee amounts to EUR 70 for the debtor and EUR 355 for the creditor. Likewise, before filing an application for insolvency proceedings of a legal person, both the debtor and the creditor must pay a deposit amounting to two minimum monthly wages in Latvia.

Insolvency proceedings of a natural person

A debtor who is a natural person may be subject to insolvency proceedings of a natural person if any of the following indicators of a natural person's insolvency are present:

1) the person is unable to settle their debts that have fallen due, and the debt totals in excess of EUR 5 000;

2) due to demonstrable circumstances, the person will be unable to settle debts that fall due within a year, and the debts total in excess of EUR 10 000;

3) the person is unable to settle debts, at least one of which is based on unsettled ancillary liabilities or joint liabilities of the debtor and the debtor's spouse or relative, or relative by affinity up to the second degree, if the debt totals in excess of EUR 5 000.

An application for insolvency proceedings of a natural person can only be filed by the debtor; creditors are not entitled to submit it.

An application for insolvency proceedings of a natural person is also subject to the payment of a State fee of EUR 70 and a deposit of two minimum monthly wages.

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?

Legal protection proceedings

The insolvency estate under legal protection proceedings includes all debtor's assets, and the debtor retains all rights to dispose of it. Pursuant to the Insolvency Law, one of the methods under legal protection proceedings involves divestment of movable property or real estate or their encumbrance with rights in rem in order to receive an extension of the deadline for meeting the creditors' claims or settling the claims of creditors. The feasibility of and the procedure for implementing the relevant method must be set out in the plan of measures of the legal protection proceedings.

Insolvency proceedings of a legal person

Once the insolvency proceedings of a legal person have been announced, the debtor loses the right to dispose of their assets, as well as assets owned by third parties controlled or held by them, and these rights are transferred to the administrator.

Pursuant to the Insolvency Law, the insolvency estate is comprised of the following:

1) the debtor's real estate and movable assets, including money;

2) money obtained by disposing of the debtor's assets;

3) assets recovered during insolvency proceedings (e.g. funds recovered on the basis of claims against third parties, as well as funds received from members of the legal person's management bodies based on their liability for damages caused);
4) income from the debtor's assets received during the insolvency proceedings of a legal person;
5) other assets legally acquired during insolvency proceedings of a legal person.
During insolvency proceedings of a legal person, all assets of the debtor are sold and the proceeds are used to cover the expenses of the insolvency proceedings of a legal person and to settle creditors' claims. The administrator of the insolvency proceedings (the administrator) is responsible for selling the debtor's assets in accordance with the plan for the sale of assets. The administrator must ensure that the debtor's assets are sold at the highest possible price in order to satisfy the creditors' claims as far as possible.

Insolvency proceedings of a natural person

Once insolvency proceedings of a natural person have been announced, the debtor loses the right to dispose of their assets, as well as assets owned by third parties controlled or held by them (with the exception of assets which are exempt from enforcement), and these rights are transferred to the administrator. During insolvency proceedings of a natural person, all assets of the debtor are sold and the proceeds are used to cover the direct expenses of the insolvency proceedings of a natural person and to settle creditors' claims.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Legal protection proceedings

The debtor. Following the announcement of the implementation of legal protection proceedings, the debtor retains control of their company and manages their own assets and assets controlled or held by them, in accordance with the plan of measures of the legal protection proceedings that has been agreed upon by the creditors and approved by the court. At the same time, a number of obligations and restrictions apply to the debtor in order to ensure the legality of the legal protection proceedings and the control over the implementation of the plan of measures by the supervisor of the legal protection proceedings (the supervisor) and the creditors.
The debtor's main obligation is to comply with the plan of measures of the legal protection proceedings. The debtor also has the following obligations:
1) to cover the expenses of the legal protection proceedings;
2) to provide written reports on the implementation of the plan of measures of the legal protection proceedings to the supervisor at least once a month;
3) at the request of the supervisor, to submit in writing and without delay all information on the implementation of the plan of measures of the legal protection proceedings and provide them with the possibility to review the debtor's economic activities and documents in person;
4) to notify the supervisor immediately of any circumstances that may prevent the debtor from implementing the plan of measures of the legal protection proceedings, etc.
With regard to restrictions, please note that during the legal protection proceedings the debtor is prohibited from the following:
1) to enter into any transactions or perform activities that may exacerbate their financial situation or damage the interests of the general body of creditors;
2) to issue loans (credits), except where issuing loans (credits) constitutes the principal activity of the debtor and this is reflected in the plan of measures of the legal protection proceedings;
3) to issue guarantees, make gifts or donations, give bonuses or other types of additional material remuneration to members of the debtor's board or council.
The supervisor. Once the debtor has prepared the plan of measures of the legal protection proceedings, the supervisor of the legal protection proceedings gives their opinion about the plan and an assessment of its compliance with the law. This must include an assessment as to whether the plan can achieve the goal of legal protection proceedings laid down in law. The opinion of the supervisor of the legal protection proceedings is submitted to the court along with the plan of measures of the legal protection proceedings. Once the implementation of the legal protection proceedings has been announced, the supervisor of the legal protection proceedings becomes responsible for supervising the implementation of the plan of measures of the legal protection proceedings, providing information to the creditors and monitoring the debtor's compliance with the restrictions laid down in the Insolvency Law.
During the legal protection proceedings, the supervisor must manage the paperwork related to the proceedings in the Electronic Insolvency Accounting System (the System).

Insolvency proceedings of a legal person

The debtor. Once the insolvency proceedings have been announced, the debtor loses all rights of management bodies defined in regulations, the debtor's articles of association or agreements, and these rights are transferred to the administrator. The administrator appoints a representative of the debtor who must participate in the insolvency proceedings. As a rule, one (or several) members of the debtor's executive body are appointed as the debtor's representative. Immediately after the day of the announcement of insolvency proceedings of a legal person, the debtor's representative must transfer to the administrator all the debtor's assets, documents related to the organisation, staff and accounting by a statement of transfer and acceptance. The debtor's representative must prepare a list of the debtor's assets and documents to be transferred, and, at the time of transfer, the documents must be organised in line with record keeping regulations. In the course of the insolvency proceedings, the debtor's representative must provide the administrator with the information they request and participate in the meetings of creditors.
The administrator. The administrator is vested with all rights, obligations and responsibilities of the management bodies laid down in regulations, the debtor's articles of association or agreements.
The administrator can, inter alia, take decision with regard to continuation of the debtor's business activities in part or in full, if such continuation is economically justified, is responsible for the payment of current taxes, and can liquidate subsidiaries of the debtor.
The administrator also performs activities related to the implementation of the insolvency proceedings: summarising, reviewing and taking decisions with regard to the creditors' claims; identifying the debtor's assets and taking steps with regard to the recovery of the debtor's assets (including lodging claims against members of the management bodies of a legal person and members (shareholders) of a capital company for the compensation of damages caused by them); selling the debtor's assets and settling the creditor's claims in accordance with the Insolvency Law; assessing transactions entered into prior to the insolvency proceedings; other activities required for the purposes of the proceedings, such as submitting the debtor's documents to the State archive.
During the insolvency proceedings of a legal person, the administrator is responsible for keeping records thereof in the System.
When the insolvency proceedings of a legal person have been completed, the administrator performs all statutory activities to remove the debtor from the public register where they were recorded, e.g. removal of a debtor (a commercial operator) from the commercial register.

Insolvency proceedings of a natural person

The debtor. Once insolvency proceedings of a natural person have been announced, the debtor loses the right to dispose of their assets, as well as assets owned by third parties controlled or held by them (with the exception of assets which are exempt from enforcement), and these rights are transferred to the administrator. Following the announcement of insolvency proceedings of a natural person, the debtor is prohibited from performing activities that may cause damages to the creditors. The debtor must provide the administrator with all information necessary for the insolvency proceedings.
All assets owned by the debtor are sold in the course of bankruptcy proceedings, and the proceeds from the sales are used to satisfy the creditors' claims in accordance with the Insolvency Law.

During the proceedings for the settlement of liabilities, the debtor must gain income to the extent of their abilities and transfer a part of their regular income to meet the creditors' claims in accordance with the plan for the settlement of liabilities.

The administrator.

If the debtor has money or assets that is expected to be sold during bankruptcy proceedings, the administrator opens an account in a credit institution in their name for the purposes of the insolvency proceedings in question. Similarly to the insolvency proceedings of a legal person, the administrator is responsible for taking the steps necessary for the purposes of the insolvency proceedings: summarising, reviewing and taking decisions with regard to the creditors' claims; identifying the debtor's assets and taking steps with regard to the recovery the debtor's assets (including lodging claims to declare transactions entered into by the debtor invalid where it is found that the debtor had acted in bad faith); selling the debtor's property and satisfying the creditor's claims in accordance with the Insolvency Law.

5 Under which conditions may set-offs be invoked?

Legal protection proceedings

Set-off is permissible in legal protection proceedings if the debtor's claim against the creditor arose at least three months prior to the court's decision to initiate a legal protection proceedings case.

Insolvency proceedings of a legal person

Set-off is permissible in insolvency proceedings of a legal person if mutual claims of the debtor and the creditor arose at least six months prior to the announcement of the insolvency proceedings of a legal person.

Insolvency proceedings of a natural person

There are no specific rules on set-off in insolvency proceedings of a natural person, thus, in accordance with the Insolvency Law, provisions for insolvency proceedings of a legal person are applicable in this event, i.e. set-off is permissible if mutual claims of the debtor and the creditor arose at least six months prior to the announcement of the insolvency proceedings of a natural person.

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

Legal protection proceedings

Given that the debtor retains control of their company, i.e. manages their own assets and assets that are held or controlled by them, after the legal protection proceedings have been initiated, they can continue contracts entered into before the legal protection proceedings were initiated. An opinion on the usefulness of continuing the contracts is given by the creditors when reviewing the plan of measures of the legal protection proceedings, by the supervisor of legal protection proceedings when preparing their report, and by the court when approving the plan of measures of the legal protection proceedings. Expenses under such contracts must be approved in the plan of measures of the legal protection proceedings.

Insolvency proceedings of a legal person

If a contract entered into by the debtor has not been implemented or has been implemented partially as at the day of announcement of insolvency proceedings of a legal person, the administrator may request that the other contracting party implement the contract or unilaterally withdraw from the contract. The administrator may implement a contract if the debtor's assets are not reduced as a result.

If the administrator unilaterally withdraws from a contract, the other contracting party may lodge their claim as a creditor.

The continued implementation of contracts that have not been terminated in cases laid down in the law, and the implementation of contracts with third parties signed by the administrator on behalf of the debtor during insolvency proceedings of a legal person is financed from the debtor's funds.

If the debtor is an insurance company, the administrator, while taking into account the interests of policyholders, assesses the necessity of transfer, termination or continuation of the existing insurance contracts, and takes all necessary legal steps to transfer, terminate or continue the existing insurance contracts.

The debtor's assignment to an authorised agent (also a procurator and commercial agent) with regard to the debtor's assets which are subject to the creditors' claims becomes invalid as of the day of the announcement of insolvency proceedings of a legal person.

Following the announcement of the debtor's insolvency proceedings, the administrator may terminate the employment contract with an employee of the debtor.

Insolvency proceedings of a natural person

The Insolvency Law does not lay down any specific provisions for reviewing or terminating contracts signed by the debtor, thus, pursuant to the Insolvency Law, provisions for insolvency proceedings of a legal person are applicable in this event, i.e. the administrator is entitled to review contracts signed by the debtor prior to the announcement of the insolvency proceedings of a natural person and withdraw from them. This practice is also enshrined in case-law.

Following the announcement of insolvency proceedings, the administrator becomes responsible for dealing with the person's assets to resolve issues with regard to the performance of obligations and settling the creditors' claims. It also means that the insolvent debtor loses the right to act as a party at court in property-related claims, and this right is assumed by the administrator as a legal representative of the debtor.

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

Irrespective of the insolvency procedure, the Insolvency Law lays down the principle of prohibition of arbitrariness, i.e. individual activities of the creditor and the debtor must not damage interests of the general body of creditors.

Legal protection proceedings

An authorised bailiff shall suspend judgment enforcement procedures if legal protection proceedings are initiated in respect of the debtor or a decision is made to initiate legal protection proceedings in the event of out-of court legal protection proceedings. If at the time of the initiation funds have already been recovered as a result enforcement activities, the authorised bailiff shall withhold enforcement expenses and meet the collector's claim. Judgment enforcement procedures are suspended for the entire duration of legal protection proceedings until their completion, except where pledged assets are not required for the implementation of the legal protection proceedings and are therefore not included in the plan of measures of the legal protection proceedings, or the court allows a secured creditor to sell the pledged assets.

Insolvency proceedings of a legal person

If judgment enforcement procedures are initiated prior to the announcement of insolvency proceedings of a legal person, they must be closed in accordance with the procedure laid down the Civil Procedure Law. Namely, the authorised bailiff completes the ongoing sale of assets if it has already been announced or if the assets have been transferred to a trading company for sale. The administrator may request that announced auctions be cancelled so that the assets can be sold as part of a collection of items. The authorised bailiff shall withhold judgment enforcement expenses from the received amount and transfer the remaining amount to the administrator to settle the creditors' claims in accordance with the procedure laid down in the Insolvency Law, taking into account the interests of the secured creditor. The authorised bailiff shall notify the holder of the assets of the obligation to transfer to the administrator the assets the sales of which have not started.

Insolvency proceedings of a natural person

Once insolvency proceedings of a natural person have been announced, the creditor is prohibited from pursuing any individual activities that may cause damages to the other creditors. Property rights of the creditor or a third party arising as a result of such activities shall be deemed invalid.
The authorised bailiff shall suspend judgment enforcement procedures if insolvency proceedings of a natural person have been announced in respect of the debtor. The authorised bailiff can complete the ongoing sale of assets only if it has already been announced or the property has been transferred to a trading company for sale, except where the plan for the sale of property of a natural person stipulates postponing the sale of a dwelling pursuant to Article 148 of the Insolvency Law. The authorised bailiff shall withhold judgment enforcement expenses from the received amount and transfer the remaining amount to the administrator to settle the creditors' claims in accordance with the procedure laid down in the Insolvency Law, taking into account the interests of the secured creditor.
At the same time, enforcement procedures in respect of claims the settlement of which is not related to the collection of the debtor's assets or money are not suspended.
If insolvency proceedings of a natural person are closed without cancelling the liabilities, enforcement procedures for the remaining amount are resumed.

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

Legal protection proceedings

Pursuant to the Insolvency Law, the opening of legal protection proceedings does not affect legal proceedings where the debtor is one of the parties.
It should be noted that, in contrast to insolvency proceedings, legal protection proceedings do not involve procedures for the admission of claims. However, it is recognised in case-law that by unilaterally deciding on the eligibility of a claim the debtor could unjustifiably exclude the creditor from the list of persons whose approval is required for the plan of measures of the legal protection proceedings. At the same time, a claim for a debt recovery brought to court by the creditor does not give legal grounds for ignoring the creditor's interests in legal protection proceedings. Accordingly, case-law also recognises that if the debtor's liabilities are reflected in the debtor's accounts and the supervisor of legal protection proceedings has not found the claim to be ingenuine prima facie, the claim is to be included in the plan of measures of the legal protection proceedings as a creditors' claim, even if the debtor and the creditor are involved in legal proceedings.
It should also be noted that if the court finds that the plan of measures of the legal protection proceedings contains liabilities that are subject to a dispute regarding the rights, and the amount of the liabilities significantly affects the process of approval of the plan of measures, the court shall take no further action on the application for legal protection proceedings.

Insolvency proceedings of a legal person

A court judgment announcing insolvency proceedings of a legal person serves as grounds for suspending property-related legal proceedings against the debtor. Following the announcement of insolvency proceedings of a legal person, the creditors can submit their claims to the administrator in accordance with the procedure laid down in the Insolvency Law.
Likewise, the court's judgement announcing insolvency proceedings of a legal person serves as grounds for revoking security for claims in accordance with the procedure established by the Insolvency Law.

Insolvency proceedings of a natural person

A court decision announcing insolvency proceedings of a natural person serves as grounds for suspending legal proceedings against the debtor and revoking security for claims in accordance with the procedure laid down in the Civil Procedure Law. Following the announcement of insolvency proceedings of a natural person, creditors can submit their claims to the administrator in accordance with the procedure laid down in the Insolvency Law.

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

For the purposes of achieving the goal of insolvency proceedings, it is important that the creditors are actively involved in the proceedings. The Insolvency Law enshrines the principle of equality of the creditors: the creditors shall have equal opportunities to participate in the proceedings and have their claims satisfied in line with the liabilities established between them and the debtor prior to the opening of the proceedings.

Legal protection proceedings

The debtor shall send the plan of measures of the legal protection proceedings to all creditors, inviting them to give their consent to the plan and setting a deadline for the approval. The creditor is entitled to submit to the debtor written objections to the plan of measures of the legal protection proceedings within five days of receipt of the plan. If the debtor deems the objections justified, they amend the plan of measures of the legal protection proceedings accordingly.
The deadline for the implementation of the legal protection proceedings can be extended, subject to consent by the majority of the creditors. The creditors are entitled to request and receive from the supervisor information on the progress of the legal protection proceedings and implementation of the plan, and to submit complaints. Likewise, the creditor may request the court to close legal protection proceedings if the debtor does not comply with the plan approved by the court.

Insolvency proceedings of a legal person

A creditor also can initiate insolvency proceedings of a legal person by submitting an application to the court. Likewise, creditors are entitled to submit creditor claims in accordance with the procedure laid down the Insolvency Law. The administrator shall verify whether the creditor claims are justified and meet the legislative requirements, and take decision to admit, reject or partially admit the claim. The creditor may lodge an appeal with a court against the administrator's decision within a month of the receipt of the decision, or submit an application with a court for the dispute regarding the rights to be examined, within a month of the receipt of the administrator's decision. The creditor is entitled to view the register of the creditors' claims. As of the eighth day following the expiry of the deadline for submitting creditor claims, each creditor is entitled to view the claims submitted by all creditors and their supporting evidence.
The administrator shall provide information to the creditors in accordance with the procedure laid down by the Insolvency Law. If the creditors have objections with regard to the information in question, they must them known to the administrator. If the objections are not taken into account, the administrator must provides a motivated response to the creditor. If the creditors disagree with the announced decision of the administrator, they are entitled to challenge the administrator's actions, apply to court with a claim for damages caused by the administrator, or propose to summon a creditors' meeting.
The creditors' meeting shall take decisions on the administrator's remuneration, propose that the administrator be dismissed, approve expenses under insolvency proceedings as justified, the method for the sales of the debtor's property or extension of the sales deadline, and further actions with the property excluded from the property sales plan. Likewise, creditors representing at least 25 per cent of the admitted amount of the principal claims in the group of secured or unsecured creditors may request an audit of the work of the administrator under the respective insolvency proceedings to be carried out by an external certified auditor or a firm of certified auditors.

Insolvency proceedings of a natural person

The creditors are entitled to submit claims in accordance with the procedure laid down in the Insolvency Law. Any creditor may summon a creditors' meeting.
Within two months of the date when the announcement of insolvency proceedings with regard to the debtor was recorded in the insolvency register, the creditors may submit to the administrator a motion for terminating the insolvency proceedings of a natural person if the creditors have access to information referred to in the Insolvency Law, information concerning restrictions on the application of insolvency proceedings or proceedings for the settlement of liabilities. The creditors are also entitled to submit their objections and proposals with regard to the plan for the settlement of liabilities prepared by the debtor.

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

Legal protection proceedings

The debtor remains in control of their company and disposes of their property themselves.

Insolvency proceedings of a legal person

Once insolvency proceedings of a legal person have been opened, the board loses its powers, and the debtor's assets and funds in its bank accounts are managed and disposed of by the appointed administrator. The administrator acquires the rights both to divide the debtor's assets and to reclaim assets placed under management, including it in the plan for the sales of the assets as appropriate. Likewise, following the announcement of insolvency proceedings of a legal person, the administrator takes a decision with regard to the termination or continuation of the debtor's business activities in part or in full.

Within two months of the announcement of insolvency proceedings of a legal person, the administrator must draw up a plan for the sales of the debtor's assets or a report attesting to the absence of assets. The assets can be sold both at an auction and at a free price decided upon by the creditors at the administrator's proposal. The debtor's assets are sold at the highest possible price in order to meet the creditors' claims. The proceeds from the sales of assets are used to settle the creditors' claims.

If the debtor's assets cannot be sold or the costs of their sales exceed the expected proceeds, the administrator excludes them from the plan for the sales of assets and immediately notifies all creditors, inviting them to keep the assets at the initial price.

When drawing up the plan for the sales of assets, the administrator shall consider the possibility of selling the debtor's company or its independent part. The creditors' gain from the sales of the company or its independent part must be greater than if the debtor's assets were sold separately.

Insolvency proceedings of a natural person

The administrator of insolvency proceedings is responsible for selling the debtor's assets in accordance with the plan for the sales of assets. The administrator shall start the sales of assets no sooner than two months after the insolvency proceedings of a natural person have been announced.

The debtor is entitled to keep the income that is necessary to cover indirect costs of insolvency proceedings of a natural person and assets that are absolutely necessary to earn income. the Civil Procedure Law also provides for assets, the recovery of which may not be enforced.

Pursuant to the Insolvency Law, the debtor may keep the dwelling mortgaged to a secured creditor based on an agreement with the secured creditor in question.

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?

Legal protection proceedings

Following the announcement of legal protection proceedings, the secured creditors may not exercise their rights for mortgaged property of the debtor included in the plan of measures of the legal protection proceedings until the proceedings have been completed.

The secured creditor may request that the mortgaged property of the debtor be sold if the restriction preventing the secured creditor from selling the mortgaged property of the debtor significantly damages the interests of the creditor in question (including cases where there is a risk of the mortgaged property being destroyed or it has significantly decreased in value). The decision to permit the sale of mortgaged property is made by the court where the respective legal protection proceedings were instigated.

Insolvency proceedings of a legal person

The secured creditor may request that the debtor's property used as security (mortgaged property) be sold two months after the date of the announcement of the insolvency proceedings of a legal person.

Assets owned by third parties that are controlled or held by the debtor are not included in the debtor's assets that may be subject to the creditors' claims. The administrator stores assets owned by third parties until it is handed over to them. The third parties must cover expenses for the storage of their assets if they do not take over their assets following the administrator's invitation. If assets owned by third parties have been disposed of during insolvency proceedings, the value of these assets must be compensated to the third parties by the party who caused the sale of the assets. If proceeds from the sale of the mortgaged property of the debtor do not cover the claims of the secured creditors, the creditors in question gain unsecured creditors' rights for the remaining part of the claim by a decision by the administrator.

The debtor's liabilities that fall due after the date of announcing insolvency proceedings of a legal person are deemed to have fallen due on the date when insolvency proceedings of a legal person were announced. Claims that generally arise after insolvency proceedings of a legal person are announced are deemed to be costs of the insolvency proceedings.

Insolvency proceedings of a natural person

The debtor's liabilities that fall due after the date of announcing insolvency proceedings of a natural person are deemed to have fallen due on the date when the insolvency proceedings were announced. Claims that arise after insolvency proceedings of a natural person are opened are deemed to be costs of the insolvency proceedings.

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

Legal protection proceedings

The debtor is responsible for stating all claims in the plan of measures of the protection proceedings, subject to the creditors' approval. The plan of measures of the protection proceedings must include all creditors. The debtor may not choose to include specific creditors in the plan, while omitting others.

Insolvency proceedings of a legal person

The creditors' claims against the debtor must be submitted to the administrator within a month of the date when insolvency proceedings with regard to the debtor were recorded in the insolvency register. If the creditor has missed the deadline for filing claims specified in Paragraph one of this Article, the creditor may submit their claim against the debtor within six months of the date when the announcement of insolvency proceedings with regard to the debtor was recorded in the insolvency register, but not later than by the date when the plan for settling the claims of creditors was drawn up in accordance with the procedures laid down in this Law. After this deadline, the limitation period expires and the creditor loses the status of a creditor along with the right to lodge claims against the debtor.

The administrator shall verify whether the creditors' claims are justified and meet the legislative requirements. If the creditor's claim does not meet the legislative requirements, the administrator shall immediately request that the creditor remedy the irregularities identified within 10 days of sending the administrator's request. If the creditor remedies the irregularities within the deadline, the creditor's claim is deemed to have be been submitted within the set deadline. If the creditor fails to remedy the irregularities within the deadline, the administrator shall adopt a decision declining the creditor's claim or admitting it in part within 10 days of the deadline set for addressing the irregularities.

Following a verification of the creditors' claims, the administrator shall take a motivated decision to admit, decline or partially admit the creditor's claim. A claim that is subject to dispute between the debtor and the creditor shall be declined by the administrator in part or in full. The administrator can decline or admit in part a creditor's claim established by a court decision only if there is proof that the debtor has settled their liabilities in part or in full after the court decision came into force.

Insolvency proceedings of a natural person

Creditors' claims against the debtor shall be submitted, verified and admitted in accordance with the procedure under insolvency proceedings of a legal person. If the creditor has missed the deadline for filing claims, the creditor may submit their claim against the debtor within six months of the date when the announcement of insolvency proceedings with regard to the debtor was recorded in the insolvency register, but not later than by the date when the final list of expenses under bankruptcy proceedings is drawn up in accordance with the procedures laid down in this Law.

If the creditor fails to submit their claim by the deadline specified above, the limitation period expires and the creditor loses the status of a creditor along with the right to lodge claims against the debtor both in the insolvency proceedings of a natural person and later when the debtor is released from their liabilities.

The limitation period does not apply to maintenance payments, claims arising from prohibited activities and claims arising from penalties imposed under administrative infringement proceedings and penalties laid down in the Criminal Law, and compensation for the damage caused.

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

Legal protection proceedings

The plan of measures of the legal protection proceedings may include advantages for persons who allocate funds for the implementation of the plan, in proportion to the amount of funds allocated.

The plan of measures of the legal protection proceedings may provide only for proportionate settlement or reduction of the principal debt, penalty or interest within a group of creditors and for each type of creditor claim (the principal debt, penalty or interest). The plan of measures of the legal protection proceedings may stipulate significantly more unfavourable conditions for a creditor compared with other creditors only with consent of the creditor concerned.

Legal protection proceedings do not apply to employees, unless they have given their express consent.

Insolvency proceedings of a legal person

Proceeds of insolvency proceedings of a legal person are distributed primarily on the basis of the type of claim (e.g. secured or unsecured claim). In specific cases the status of the creditor can be taken into account (e.g. tax authority).

Proceeds from the sale of the debtor's assets used as security are used to satisfy the claim of the secured creditor. Auction costs, including the costs of valuation of the pledged assets and the administrator's fee, are withheld from the proceeds of the sale of the pledged assets as a matter of priority, with the remaining amount being used to settle the claim of the secured creditor. If there are any funds left after the above costs have been covered and the claim has been satisfied, they are included in the debtor's assets and used to satisfy claims of other creditors.

The remaining funds of the debtor are primarily used to fully cover the costs of the insolvency proceedings of a legal person.

Once the costs have been covered, the claim of the Insolvency Control Service is settled if the employee claim guarantee fund was used to satisfy the claims of the debtor's employees. Then the claims of employees and the tax authority are settled.

Once claims of the above creditors have been settled in full, the debtor's remaining funds are divided to settle the principal amount of claims (excluding interest) of the other unsecured creditors. The unsecured part of secured creditors' claims and unsettled part of the secured creditors' claims are also settled in this round.

If the debtor's funds are insufficient to cover the full amount of creditors' claims referred to in Paragraph 5 of this Article, the claims in question must be met in proportion to the amount owed to each creditor.

The debtor's funds remaining after settling the principal amount of the unsecured creditors' claims shall be used to settle adjacent claims of the unsecured creditors (in proportion to the amount owed to each creditor).

The debtor's funds left after the settlement of all of the above claims are distributed among participants (shareholders) or members of the debtor in proportion to the amount of their individual investment, the debtor (natural person), their heir (by way of inheritance) or persons who have a claim to the assets of an association or a foundation in accordance with legislation or the articles of association of the association or foundation concerned.

Insolvency proceedings of a natural person

During bankruptcy proceedings the debtor is entitled to keep the income that is necessary to cover indirect costs of insolvency proceedings of a natural person and assets that are absolutely necessary to earn income.

Maintenance payments, including contributions to the Maintenance Guarantee Fund, and costs of insolvency proceedings of a natural person are covered from the debtor's funds as a matter of priority.

Proceeds from the sale of the debtor's assets used as security are used to meet the claim of the secured creditor.

Claims of the unsecured creditors are joined in a single group without ranking. The remaining funds are used to settle the claims of the unsecured creditors in proportion to the principal amount owed to each creditor. The debtor's funds left after settling the principal amount of the unsecured creditors' claims are used to settle adjacent claims of the unsecured creditors (in proportion to the amount owed to each creditor).

During the proceedings for the settlement of liabilities, the debtor may keep up to two thirds of their income to cover their sustenance costs and to keep assets that are crucial for earning their income.

Hence, taking account of provisions of the plan for the settlement of liabilities, the debtor shall transfer one third of their income (but at least one third of the gross minimum monthly wage in Latvia) to settle the claims of creditors. When preparing a plan for the settlement of liabilities, the debtor shall include the principal amounts of all creditors' claims and provide for their settlement in proportion to the claim of each creditor.

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

Legal protection proceedings

Legal protection proceedings are closed by the court if:

1) the majority of creditors defined in the Insolvency Law have not supported the plan of measures of the legal protection proceedings in accordance with the procedure and time frame laid down in the Insolvency Law;

2) the plan of measures of the legal protection proceedings does not comply with provisions of the Insolvency Law.

The court closes legal protection proceedings and opens insolvency proceedings of a legal person if:

1) legal protection proceedings in respect of the debtor have been opened for the second time in a year, but the implementation of the legal protection proceedings has not been announced;

2) following the receipt of a creditor's application, if the debtor does not implement the plan of measures of the legal protection proceedings for more than 30 days and has not submitted to the court any amendments to the plan;

3) following the receipt of an application submitted by a representative of the majority of creditors defined in the Insolvency Law, if the debtor has not carried out the actions laid down in the Insolvency Law or has provided false information, if the debtor does not implement the plan of measures of the legal protection proceedings for more than 30 days and has not submitted to the court any amendments to the plan, or the debtor does not comply with activity restrictions laid down in the Insolvency Law.

If the plan of measures of the legal protection proceedings has been implemented, the debtor shall submit to the court an application for the closure of legal protection proceedings. In contrast, if the debtor is unable to settle liabilities defined in the plan of measures of the legal protection proceedings, the debtor shall submit to the court an application for insolvency proceedings along with a request that legal protection proceedings be closed.
Closure of legal protection proceedings following the implementation of the plan of measures of the legal protection proceedings serves as grounds for lifting the activity restrictions imposed on the debtor under legal protection proceedings and ending the application of the method used for the proceedings.
If the plan of measures of the legal protection proceedings has not been approved by the majority of creditors in accordance with the procedure and time frame laid down in the Insolvency Law and legal protection proceedings are closed, the restrictions linked to the announcement of the legal protection proceedings are lifted and the amount of penalty, interest and late payment charges for unsettled liabilities are calculated in full.

Insolvency proceedings of a legal person

Insolvency proceedings shall be closed by a court decision, once the administrator has implemented the plan for the sale of the debtor's assets and the plan for the settlement of creditors' claims. Likewise, the court shall close insolvency proceedings if the administrator, in their report on the absence of assets has proposed that insolvency proceedings be closed, and the creditors have approved the proposal. In such a case, the debtor (a legal person) is removed from the relevant public register.
The insolvency proceedings are closed by a court decision if the plan of measures of the legal protection has been approved and the court has decided to change insolvency proceedings of a legal person to legal protection proceedings. In the event of this, the debtor continues their operations in their previous status.

Insolvency proceedings of a natural person

Insolvency proceedings of a natural person can be closed without opening proceedings for the settlement of obligations. The court shall close bankruptcy proceedings along with insolvency proceedings of a natural person if restrictions have been identified with regard to the application of insolvency proceedings of a natural person with regard to the debtor. In this case, an application for the closure of bankruptcy proceedings shall be submitted by the administrator within three months of the announcement of insolvency proceedings of a natural person. Likewise, the court can close bankruptcy proceedings along with insolvency proceedings of a natural person if no claims have been submitted by the creditors. In this case, an application for the closure of bankruptcy proceedings shall be submitted by the debtor within a month of expiry of the deadline for the submission of creditors' claims.
If insolvency proceedings of a natural person are closed along with the completion or closure of bankruptcy proceedings, the administrator's powers and restrictions preventing the debtor from disposing of their property shall also end, the creditors' shall regain their rights to demand the settlement of the debtor' s liabilities to the extent they have not been discharged under insolvency proceedings of a natural person, and proceedings with regard to the enforcement of the debt that has been awarded but not yet collected and proceedings for the discharge of debtor's liabilities in court are resumed.
If the debtor has successfully completed the steps laid down in the plan for the settlement of a natural person's liabilities, the debtor's liabilities defined in the plan that remain following the implementation of the plan are cancelled and enforcement proceedings for the recovery of the cancelled liabilities are closed.
Proceedings for the settlement of liabilities shall not be applied or shall be closed in the following cases:
• the debtor, in the course of the three years prior to the announcement of insolvency proceedings of a natural person or during the insolvency proceedings, entered into transactions that resulted in the debtor's insolvency or damages to creditors, where he/she was aware or should have been aware that such transactions may result in insolvency or damages to the creditors;
• the debtor has knowingly provided false information about their financial situation and not disclosed their true income;
• the debtor does not discharge their obligations under bankruptcy proceedings or proceedings for the settlement of liabilities, significantly hindering the progress of insolvency proceedings.
If proceedings for the settlement of liabilities are closed without discharging the debtor from their liabilities, creditors' claims are resumed and calculated in full, and previously suspended legal proceedings and the enforcement of judgments are also resumed.

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

Legal protection proceedings

Normal provisions with regard to the debtor's operations and the creditor's rights apply following the closure of the legal protection proceedings.

Insolvency proceedings of a legal person

The administrator submits to the Register of Enterprises an application for the removal of the debtor from the relevant register within five days of the receipt of the court decision to close the proceedings. After removal from the register, the debtor is wound up, and the creditors lose their right to lodge claims against the debtor, because the debtor ceases to exist.
It should be added that a creditor may lodge a claim against the debtor's board members to the extent of the unsettled amount of claim within a year of the closure of insolvency proceedings, if the administrator of the insolvency proceedings did not receive the debtor's accounting documents or they were in a condition that did not allow to gain a clear idea about the debtor's transactions and financial situation in the three years prior to the announcement of the insolvency proceedings. Prior to the closure of the insolvency proceedings, such a claim can be lodged by the administrator of the insolvency proceedings on behalf of the debtor, whereas the creditor is entitled to join the proceedings as a third party.

Insolvency proceedings of a natural person

If insolvency proceedings are closed before the procedure for the settlement of liabilities is completed, the administrator's rights and restrictions preventing the debtor to dispose of their property as laid down in the Insolvency Law also end, the creditors regain their rights to demand settlement of the debtor's liabilities to the extent that they have not been discharged under insolvency proceedings of a natural person, and proceedings with regard to the enforcement of debt that has been awarded but not yet collected and proceedings for the discharge of the debtor's liabilities in court are resumed.
If the debtor has successfully completed the steps laid down in the plan for the settlement of a natural person's liabilities, the debtor's liabilities defined in the plan that remain following the implementation of the plan are cancelled and enforcement proceedings for the recovery of the cancelled liabilities are closed.
The debtor is not discharged from the remaining liabilities set out in the plan for the settlement of a natural person's liabilities if the debtor has not taken the actions defined in the plan.
The following claims are not extinguished under proceedings for the settlement of liabilities, even if a plan for the settlement of liabilities has been implemented successfully:
• claims for maintenance payments;
• claims arising from prohibited activities;
• a secured claim, if the debtor has kept the dwelling used as security under the claim in question, unless an agreement between the debtor and the secured creditor provides otherwise. Enforcement proceedings for the settlement of the above liabilities are resumed to the extent of the unsettled amount of debt;
• claims arising from penalties imposed under administrative infringement proceedings and penalties laid down in the Criminal Law, as well as compensation for damages.

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

Legal protection proceedings

The costs of legal protection proceedings include the remuneration of the supervisor of the legal protection proceedings and expenses incurred in conducting legal protection proceedings legally and efficiently. The costs of the legal protection proceedings are covered from the debtor's funds.

Insolvency proceedings of a legal person

The costs of insolvency proceedings of a legal person (both the administrator's remuneration and expenses of the insolvency proceedings) are covered from the debtor's funds.

If the costs incurred in the course of insolvency proceedings of a legal person cannot be covered from the debtor's funds, funds of the creditors or another natural or legal person can be used to cover the costs if such an agreement has been reached in accordance with the law.

In cases where the costs of insolvency proceedings of a legal person cannot be covered by the sources above and the administrator draws up a report attesting to the absence of debtor's assets, when planning the closure of insolvency proceedings of a legal person, the costs of the proceedings are covered from the deposit of the insolvency proceedings of a legal person, which is transferred to the administrator to cover the costs of the insolvency proceedings of a legal person and remuneration.

If an application for insolvency proceedings of a legal person was submitted by an employee of the debtor who is exempt from the requirement to pay a deposit in part or in full, the costs of the insolvency proceedings of a legal person are covered from the employee claim guarantee fund.

Insolvency proceedings of a natural person

Direct and indirect costs are distinguished in insolvency proceedings of a natural person.

The direct costs of insolvency proceedings of a natural person include the costs related to ensuring the proceedings:

• the costs of advertisements, auctions, opening, operating and closing a payment account;

• the costs of mail correspondence services;

• the costs related to the valuation of a natural person's assets;

• the costs of notary services;

• the costs related to storing the assets of a natural person if they were transferred to the administrator, verification of transactions, and insurance of the assets and transactions.

These expenses are covered from the proceeds of the sales of the natural person's assets, but, in the absence of assets or them being insufficient to cover the direct costs, the administrator may request that the debtor cover the costs. However, it should be pointed out that the debtor may keep two thirds of their income, and may be required to transfer no more than a third to cover the direct costs.

The indirect costs of the insolvency proceedings of a natural person, such as current tax or duty payments, current maintenance payments, rent and utility payments, are covered from the income of the natural person (two thirds of the income that the debtor is allowed to keep).

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

Legal protection proceedings

The supervisor is not entitled to dispute transactions made prior to the opening of the legal protection proceedings. Following the opening of legal protection proceedings, the debtor's actions are restricted: they are not allowed to enter into any transactions or pursue activities that may exacerbate their financial situation or damage the interests of the general body of creditors.

Insolvency proceedings of a legal person

The administrator must evaluate the debtor's transactions and lodge a claim in court requesting that the relevant transaction be declared invalid regardless of its type, if the transaction was made:

1) after the date of announcing insolvency proceedings of a legal person or four months prior to the date of announcing insolvency proceedings of a legal person, and resulted in damages to the debtor, irrespective of whether the person with whom or in whose favour the transaction was made was aware of the damages to the creditors;

2) three years prior to the date of announcing the insolvency proceedings of a legal person, and resulted in damages to the debtor, and the person with whom or in whose favour the transaction was made was aware or should have been aware of the damages to the creditors.

If a transaction that caused damages to the debtor was made with or in favour of parties with an interest in the debtor, they shall be deemed to have been aware of the damages caused unless they prove otherwise.

A secured creditor may request that a transaction made by the administrator be declared invalid if the transaction in question concerns assets pledged as security under the claim and the secured creditor's interests are undermined.

The administrator must evaluate and lodge a claim in court requesting the return of assets or their part gifted by the debtor if the transaction was made in the three years prior to the date of the announcement of the insolvency proceedings or after that date where inequality of the parties' liabilities indicates that a gift was actually made. A donation can be appealed against and requested back only if it was illegal or was not used in accordance with the intended purpose.

Sums of money paid by the debtor to cover debts in the six months prior to the announcement of the insolvency proceedings of a legal person and after the date of the announcement (except the amounts paid by the administrator in the course of insolvency proceedings of a legal person) shall be repaid if one of the following factors has been identified:

1) the payment was made before the liabilities became due, if other liabilities where the payments had become due were not honoured and the parties' rights and obligations referred to in Paragraph 3 of this Article can be renewed;

2) the debt was paid to persons with an interest in the debtor, while other liabilities, which were due prior to the due date of the liabilities with regard to the interested persons, were not honoured. This provision also applies to debts collected by officers of court, withholding the enforcement costs.

A creditor shall repay the amount paid by the debtor in the three months prior to the date of the announcement of the insolvency proceedings of a legal person in order to avoid announcing proceedings for the debtor's insolvency based on an application submitted by the creditor receiving the amount.

If the amounts paid to cover debt are repaid in cases laid down in Paragraphs 1 and 2 of this Article, the parties' liabilities (including the reinforcement of liabilities) and the respective rights that were in force prior to the settlement of debt shall be renewed.

Furthermore, the administrator is under obligation to lodge a claim in court requesting that a pledge agreement be declared invalid where the right of pledge was established after the record of the announcement of insolvency proceedings in respect of the debtor was made in the insolvency register.

Insolvency proceedings of a natural person

Transactions entered into by the debtor can be contested in accordance with the procedure under insolvency proceedings of a legal person if the following is found in the course of the insolvency proceedings:

• the debtor, in the course of the three years prior to the announcement of insolvency proceedings of a natural person or during the insolvency proceedings, entered into transactions that resulted in the debtor's insolvency or damages to creditors, where he/she was aware or should have been aware that such transactions may result in insolvency or damages to the creditors;

• the debtor has knowingly provided false information about their financial situation and not disclosed their true income;

• the debtor is not discharging their obligations under bankruptcy proceedings or proceedings for the settlement of liabilities, significantly hindering the progress of insolvency proceedings.

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Insolvency/bankruptcy - Lithuania

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against legal and natural persons.

Legal persons are subject to bankruptcy proceedings, out-of-court bankruptcy proceedings and restructuring proceedings.

Bankruptcy proceedings or out-of-court bankruptcy proceedings may be brought against legal entities of any type, except budgetary bodies, political parties, trade unions and religious communities and associations.

Upon institution of bankruptcy proceedings or out-of-court bankruptcy proceedings, the assets of the legal entity are sold and the proceeds used to satisfy the interests of creditors, while the legal entity itself is wound up on the grounds of bankruptcy.

Restructuring proceedings may be commenced against legal entities of any legal type, except budgetary bodies, political parties, trade unions, religious communities and associations, credit institutions, paying bodies, electronic money institutions, insurance and re-insurance companies, management companies, investment companies and brokers trading in public securities. Restructuring proceedings are designed to allow legal entities encountering financial challenges to restore solvency, maintain and develop their operations, pay their debts and avoid bankruptcy whilst continuing their business operations. To that end, the commitments of the legal entity under restructuring are distributed over a four -year period based on a restructuring plan, which must be approved by both the members and the creditors of the legal entity. The period for plan implementation may be extended for another year. Extra-judicial restructuring proceedings are not possible.

Bankruptcy proceedings may be brought by one natural person against another, including farmers and the self-employed. Extra-judicial bankruptcy in respect of a natural person is not possible.

2 What are the conditions for opening insolvency proceedings?

Bankruptcy proceedings may be brought against a legal person where the court has determined the existence of at least one of the following circumstances:
the company is insolvent;
the company is late in making payments relating to employment relationships to its employees;
the company is or will be unable to meet its obligations.

Company insolvency is understood to be a state where a company is unable to meet its obligations (does not pay debts, does not perform work paid for in advance, etc.) and the overdue obligations of the company (debts, overdue work, etc.) exceed one half of the book value of its assets.

An out-of-court bankruptcy procedure is also possible for a legal entity, provided that there are no ongoing court proceedings with property claims filed against the company and that no recovery is being pursued against the company based on enforcement instruments issued by courts or other authorities. In extra-judicial bankruptcy proceedings, the issues falling within the competence of the court, are decided by the meeting of the company's creditors.

Restructuring proceedings may be brought against a legal person that:
has not terminated its operations;
is not going bankrupt or already bankrupt;
was established at least three years before filing the restructuring petition was filed with the court;
if at least five years have passed since:

(a) the court decision closing the restructuring case;
(b) the court order to terminate the restructuring because all the creditors withdrew their claims or the company being restructured satisfied the requirements of all creditors before the deadline set in the restructuring plan.

Bankruptcy proceedings may be instituted in respect of a natural person who is insolvent and acting in good faith. A natural person may be declared insolvent if he or she is unable to discharge his/her overdue debt obligations for an amount exceeding 25 minimum monthly wages, as approved by the Lithuanian Government.

Good faith on the part of a natural person is determined based on the assessment of whether he or she has provided full and accurate information and whether he or she became insolvent while acting in good faith, i.e. whether or not the natural person's actions over the last three years satisfied the criteria of due care and diligence and did not knowingly allow the accumulation of the outstanding debts.

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?

All the assets of a company going bankrupt or being restructured, irrespective of their nature (movable or immovable, tangible or intangible, property rights, etc.) or location, make up the company’s estate. The assets or revenues acquired by the company in the process of bankruptcy or restructuring also fall within the company’s estate and are used to satisfy creditors’ claims. In the event of bankruptcy, the ranking of creditors’ claims is set by law, whilst for restructuring, ranking is shown in the restructuring plan. Under the bankruptcy procedure, the entire bankruptcy estate is realized and the income received is used to cover the bankruptcy administration costs and the creditors’ claims. In the case of restructuring, by contrast, only the assets specified in the restructuring plan are realised.

A special procedure applies to revenue from the business operations of an the enterprise in bankruptcy: this revenue is used to cover the respective operating costs. All the payments related to business activities are processed through the company’s special account designated for business activities (the company’s business account), which may not be used for payments to other creditors.

In the event of a natural person going bankrupt, his or her entire assets, whatever their nature (movable/immovable, tangible/intangible, property rights, etc.) or location, are accounted for. Only cash money held by the natural person not exceeding one minimum monthly wage is excluded from the accounts. Creditors’ interests are satisfied from the proceeds of selling the person’s entire assets (with the exceptions enumerated below).

Under the bankruptcy procedure for natural persons, a natural person going bankrupt has the right to use a certain amount of his/her income to satisfy his /her basic needs. That amount is set by the court upon institution of bankruptcy proceedings, with regard to the needs of the natural person and his dependants; once the court has approved the natural person’s solvency restoration plan, the amount available to the natural person is set in that plan.

Special status is also granted to the natural person's only dwelling necessary for the basic needs of the natural person and/or their dependants as well as any assets necessary for the natural person's self-employment and/or farming operations. A natural person in bankruptcy may also retain the right to the property in question, even if mortgaged, provided that he/she has agreed so with the mortgagee and such retention does not infringe the rights of other creditors.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Under corporate bankruptcy proceedings, the appointed bankruptcy administrator takes over the company's management, disposes of its estate, organises the sale of the estate and settles with creditors using the proceeds, and takes any steps necessary to wind up the company. The key functions of the corporate bankruptcy administrator are as follows:

to represent the company and to defend its interests and those of all its creditors;

to take over the management of the company in bankruptcy and the bankruptcy estate;

to terminate company contracts that will no longer be implemented (including contracts with members of the management bodies and staff);

to apply for money from the Guarantee Fund in order settle up with creditors/employees;

where necessary, to enter into temporary work or service contracts required for the purposes of the bankruptcy procedure;

to verify the creditors' claims filed and to submit the list of these for approval by the court;

to oversee the business operations of the company in bankruptcy;

to check the company's transactions entered into over the three-year period prior to the institution of the bankruptcy proceedings;

to dispute the company's transactions in court if they are contrary to the company's operating objectives and may have contributed to the company's inability to pay its creditors;

where justified, to apply to the court to have the bankruptcy declared intentional;

to convene creditor meetings;

to draft activity reports and to submit them to the meeting of creditors;

to compile and deliver the company's annual and intermediate financial statements;

to implement the decisions of the court and the creditors' meeting;

to provide information on the bankruptcy procedure;

to organise the sale of the bankrupt company's assets;

to use the funds obtained in the course of the bankruptcy procedure to settle up with the creditors;

to perform any actions necessary to wind up and unregister the company.

In the case of a company restructuring, the assigned restructuring administrator acts as a professional consultant and independent person in control of the restructuring procedures. The key functions of the restructuring administrator are as follows:

to contribute to the drafting and consideration of the company's restructuring plan and to take measures to ensure that the restructuring plan is drafted, submitted for approval and implemented within the deadlines set by the court;

to prepare a written conclusion on the feasibility of the draft restructuring plan;

to oversee the activities of the management bodies of the company being restructured in as far as they relate to the implementation of the restructuring plan, to notify the members of the company's management bodies of the shortcomings found in their activities and set a deadline for rectifying these, and to apply to the court for removal of the management bodies of the company;

to convene meetings of the company's members, owners of the representatives of the body exercising the rights and obligations of the owner of a State or municipal enterprise and to participate in those meetings without voting rights;

to supply information concerning the restructuring proceedings and to inform the court about the progress of the restructuring plan.

The restructuring administrator, together with the management bodies of the company being restructured, are responsible for the implementation of the court-approved restructuring plan.

In the case of bankruptcy of a natural person, the assigned bankruptcy administrator disposes of the assets of the natural person organises their sale, and uses the proceeds to settle with the creditors. The key functions of the natural person bankruptcy administrator are as follows:

to dispose of the assets of the natural person and the funds in the deposit account;

to keep the accounts of all the funds received by the natural person and of the use thereof;

to organise the sale of the natural person's assets and settle up with the creditors;

to convene creditor meetings and take part in them without voting rights;

to provide information on the bankruptcy procedure for the natural person and to deliver the restoration plan implementation report;

to initiate amendments to the solvency restoration plan;

to represent the natural person in proceedings for recovery of assets on behalf of the natural person in bankruptcy and take action to recover debts from the debtors;

to defend the rights and legitimate interests of the natural person and all creditors;

to evaluate the expediency of a natural person's self-employment and/or farming activities .

A natural person going bankrupt must make every effort to satisfy the creditors' claims. To that end, the natural person in bankruptcy must, as far as possible, have a job or other income-generating activities, be actively seeking employment or looking for a higher-paying job, allocate income to satisfy creditors' claims and draft and, upon the court's approval, implement the solvency restoration plan and cooperate with the assigned bankruptcy administrator.

In the course of the bankruptcy proceedings, a natural person in bankruptcy has the right to obtain information from the bankruptcy administrator, attend creditor meetings and challenge illegal decisions thereof, request replacement of the bankruptcy administrator and seek compensation for damage in the event of the administrator's failure to properly carry out its functions.

5 Under which conditions may set-offs be invoked?

For corporate bankruptcies as well as those of an individual, the set-off of claims between the person in bankruptcy and those of the creditors is prohibited as of the court's ruling commencing the bankruptcy proceedings, except for set-offs allowed by the provisions in tax laws concerning set-offs in the event of tax overpayment (tax difference).

From the day restructuring proceedings are commenced in respect of a company by a court ruling until the day of the court ruling approving the restructuring plan, any set-offs of the claims of the company against those of its creditors is suspended. Subsequently such set-offs are possible in accordance with the court-approved restructuring plan.

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

In the case of company bankruptcy, within 30 days of the entry into force of the court ruling instituting bankruptcy proceedings, the assigned bankruptcy administrator informs the persons concerned that the company's current contracts (except for employment contracts and contracts giving rise to a right of claim on the part of the company in bankruptcy) will not be implemented and should be deemed to have expired.
With the entry into force of the court ruling instituting bankruptcy proceedings, the company's management bodies lose their powers and the company's administrator, with a written prior notice of 15 days, terminates the employment or civil contracts with the company's board members and the executive.
The bankruptcy administrator notifies other employees of the upcoming termination of their employment contracts within three working days of entry into force of the court ruling instituting bankruptcy proceedings against the company and terminates the employment contracts with the employees within 15 working days of the said notice. Fixed-term employment contracts are concluded with dismissed employees which are still needed to carry out the company's bankruptcy proceedings. The required numbers of such staff by post are defined by the creditors' meeting.
The company's restructuring does not have an effect on the current agreements of the legal entity. All the contracts signed are evaluated from the standpoint of expediency and the restructuring plan provides for termination of unviable contracts. They are terminated in accordance with the general procedure, as the law makes no specific provision for termination of contracts during restructuring proceedings.
For bankruptcy proceedings relating to a natural person, the solvency restoration plan specifies the contracts to be terminated and those whose implementation is to continue. Once the court has approved the solvency restoration plan, the natural person going bankrupt must inform the persons concerned of the contracts to be terminated according to the solvency restoration plan.

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

In the event of the bankruptcy of a company or natural person, the claims of individual creditors must be transferred to the assigned bankruptcy administrator. Subsequently the claims are approved by the court, while the dispute about the factual basis for or the amount of any specific claim is dealt with in the bankruptcy proceedings.
In the case of company restructuring proceedings, the claims pre-dating the institution of the restructuring proceedings are filed with the assigned restructuring administrator within the deadline set by the court. Subsequently the claims are approved by the court, while the dispute on the factual basis for or the amount of any specific claim is dealt with in the restructuring proceedings. The claims of individual creditors emerging after the institution of restructuring proceedings are submitted and relevant disputes are resolved under the general procedure.
After the institution of bankruptcy or restructuring proceedings, the bailiff must suspend enforcement actions and enforcement proceedings and forward the enforcement instruments to the court that commenced the respective bankruptcy or restructuring proceedings.

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

Where it appears, prior to the issue of the court order assigning a hearing for the case in which proprietary claims have been filed against the defendant, that bankruptcy proceedings have been initiated against the defendant, the proceedings concerning the property claims against the defendant are suspended and referred to the court seized of the bankruptcy case.
In other instances, i.e. (a) where the court order assigning a hearing for the case has been already issued at the moment when the fact of bankruptcy proceedings instituted against the defendant becomes known or (b) where restructuring proceedings are instituted in respect of the defendant, the fact of institution of restructuring proceedings in respect of the defendant does not give grounds for referring the case to the court seized of the respective bankruptcy or restructuring lawsuit.

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

The key rights of creditors in corporate bankruptcy proceedings are as follows:
to apply to the court requesting bankruptcy proceedings against the insolvent company;
to decide on the initiation of the out-of-court bankruptcy procedure;
to refer their claims to the assigned company bankruptcy administrator within the deadline set by the court;
to attend creditor meetings and vote on:
approval of the activity reports presented by the administrator;
approval and modification of the administration cost estimate;
approval of the price of sale of the company's assets;
approval of the annual financial statements drawn up in the course of the company's bankruptcy procedures;
the company's business activities (their continuity, renewal, limitation and discontinuation, approval of the cost estimate, etc.);
the number and positions of staff to be employed in the course of the company's bankruptcy procedures;
the administrator's remuneration;
arrangements with creditors;
a motion for removal of the administrator;
other issues;
to receive, under the procedure prescribed by the creditors' meeting, information on the progress of the company's bankruptcy proceedings from the administrator;
to challenge the transactions concluded by the company (*actio Pauliana*);
to appeal to the court for the bankruptcy to be declared intentional;
to challenge the decisions of the meeting of creditors;
to appeal to the court for removal of the administrator;
to satisfy their claims from the assets and income received by the company in bankruptcy.
The key rights of creditors in natural person bankruptcy proceedings are as follows:
within the time limit set by the court, to file with the bankruptcy administrator their claims that emerged before the institution of the natural person bankruptcy proceedings;
to request satisfaction of claims in accordance with the procedure prescribed by the plan;
to attend creditors' meetings (after the adoption of the solvency restoration plan for a natural person in bankruptcy, creditor meetings must be convened at a minimum frequency of once every six months) and vote on:
creditors' complaints against the actions of the bankruptcy administrator;
the requirement that the bankruptcy administrator deliver its activity reports;
approval and modification of the bankruptcy administration cost estimate;
approval of the price of sale of the debtor's assets;
the natural person's self-employment and/or farming activities (their continuity, commencement, renewal, limitation, termination etc.);
proposals to update the solvency restoration plan;

a motion for replacement of the bankruptcy administrator;
other issues;
to receive, under the procedure prescribed by the creditors' meeting, information on the progress of the bankruptcy proceedings from the bankruptcy administrator;
to provide assistance in meeting debt obligations;
to put forward proposals regarding the solvency restoration plan;
to address the creditors' meeting concerning the activities or replacement of the bankruptcy administrator or to propose another candidate for the bankruptcy administrator;
to file an appeal against the decisions of the creditors' meeting within 14 days of the day when they became aware, or should have become aware of, those decisions;
apply to the court for termination of the natural person bankruptcy proceedings;
apply to the court for removal of the bankruptcy administrator;
to satisfy their claims from the assets and income received by the natural person in bankruptcy;
The key rights of creditors in company restructuring proceedings are the following:
to file with the assigned restructuring administrator claims that emerged before the institution of the restructuring proceedings in respect of the debtor;
to attend creditors' meetings and vote on:
approval of the restructuring plan;
removal of the restructuring administrator and proposal of another candidate for the restructuring administrator;
a motion for restriction of the competence of the company's management bodies;
a motion for termination of the company's restructuring proceedings in the event of non-implementation or inadequate implementation of the restructuring plan;
the request to extend the period for the implementation of the restructuring plan;
other issues;
to receive information on the company's restructuring, except for information constituting a commercial/industrial secret, from the company's management body and the restructuring administrator;
to provide assistance in meeting debt obligations;
to submit proposals on the restructuring plan to the restructuring administrator or the company's management body;
to address the creditors' meeting concerning the restructuring administrator's activities or replacement thereof;
to file an appeal against the decisions of the creditors' meeting/committee within 14 days of the day when they became, or had to become, aware of those decisions;
to satisfy claims during the restructuring period.

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

In the case of a company in bankruptcy, once the court ruling instituting bankruptcy proceedings against the company has come into effect, its management bodies lose their authority, while the assigned bankruptcy administrator manages and uses the assets of the company in bankruptcy and disposes of the company funds in bank accounts. The administrator organises the sale of the bankrupt company's assets and sells or transfers them to the creditors.
Different procedures apply to the sale of different types of assets. For instance, real estate or mortgaged property as well as assets with a value exceeding 250 basic social benefits are sold at public auction, while perishable items are sold at a price set by the administrator based on market prices. The procedure and the price of sale of other assets are set by the creditors' meeting of the company in bankruptcy. Moreover, there are additional regulatory requirements on the sale of assets of certain types (such as securities and radioactive materials).
When a company is being restructured, the company's management bodies continue to supervise its activities and dispose of its assets, yet they must adhere to the approved restructuring plan. In the course of restructuring, the activities of the company's management bodies are overseen by the court-appointed restructuring administrator. In the period from the commencement of the restructuring proceedings to the approval of the restructuring plan (i.e. during the period of restructuring plan preparation), it is prohibited, without the court's permission, to sell, transfer the ownership of or make available for gratuitous use the company or a part thereof, its long-term assets, the real property classified as short term-assets or property rights, while the company being restructured is not allowed to provide any guarantees or sureties or otherwise secure the performance of the obligations of other parties.
A natural person going bankrupt is not allowed to dispose of the assets in his or her possession. The assets of a natural person going bankrupt are disposed of by the bankruptcy administrator based on the court-approved plan for the restoration of the natural person's solvency. A natural person going bankrupt can only make use of the monthly amount allocated for his/her basic needs as well as the funds necessary to continue his/her activities. The amount necessary to meet the basic needs in the period from the institution of the bankruptcy proceedings to the approval of the solvency restoration plan is set by the court; once the solvency restoration plan has been approved, that amount is identified in the plan.
In the course of the bankruptcy proceedings for a natural person, the sale of assets required in order to meet the creditors' claims is organised by the bankruptcy administrator in accordance with the sequence and time limits defined in the solvency restoration plan. In view of the assets sale price specified in the solvency restoration plan and the market price of the assets being sold, the initial sale price of the assets is approved by the creditors' meeting. Assets may be sold at a price lower than that specified in the solvency restoration plan only with the consent of the natural person in bankruptcy.
Immovable property and mortgaged property is sold at public auction (except property initially priced lower than the compensation for organising the public auction). The price of assets that could not be sold at two public auctions as well as the sale price and procedure for other assets are set by the meeting of creditors. Unsold assets may be handed over to the creditors at their request and with the consent of the creditors' meeting.
Where minor children (adopted children) and/or persons under guardianship/custody live with a natural person, their only dwelling (whether mortgaged or not) may be sold based on a court decision no sooner than 6 months after the approval of the plan. During that period, the natural person must find a new home to buy or rent. A natural person is entitled to agree with the mortgagee that title to the mortgaged property (usually the dwelling) will be retained in the course of the bankruptcy procedures. Such property may not be sold.
Additional regulatory requirements may apply to the procedure for the sale of certain types of assets (such as securities and radioactive materials).

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?

Upon the institution of bankruptcy proceedings against a company, its business operations are typically terminated, and therefore no new claims can arise from them in respect of the company. Where a company continues its operations upon the institution of bankruptcy (this is possible where the operations reduce the losses), the claims arising out of those activities are covered from the revenues generated by those operations. Any claims that could not be covered from those revenues are third-rank claims to be satisfied under the general procedure (also see the answer to question 13).

Claims that appear following the start of company restructuring are satisfied under the general procedure, as the legislation does not contain any special provisions in that regard.

Following the commencement of bankruptcy proceedings for a natural person, the court accepts and approves creditors' claims directed at self-employment and/or farming activities as well as debt obligations undertaken by the natural person in bankruptcy to carry out those activities and/or to perform bankruptcy procedures. Once those claims have been approved, the solvency restoration plan for the natural person in bankruptcy is updated. Other claims brought following the institution of bankruptcy proceedings against a natural person are satisfied under the general procedure, as the legislation does not contain any special provisions in that regard.

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

In the event of bankruptcy of companies and natural persons, and in the event of company restructuring, the court commencing bankruptcy or restructuring sets a time limit during which creditors are allowed to file their claims with the assigned bankruptcy or restructuring administrator and to submit relevant evidence to substantiate those claims. A maximum period of 45 days is set in the case of corporate bankruptcy or restructuring and a period of at least 15 days but no longer than 30 days is set in the case of bankruptcy of a natural person. The assigned administrator verifies the claims filed and, in the absence of any dispute as to their existence or amount, presents them to the court for approval. A challenge to the claims or a part thereof from the administrator is resolved by the court. The court ruling approving a creditor's claim is subject to appeal. If claims are submitted after the deadline for submission thereof set by the court, the deadline may be extended if the reasons for missing it are recognised to be valid.

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

Creditors' claims secured by means of pledge or mortgage are initially settled from funds generated from the sale of the debtor's mortgaged property or by transferring the mortgaged property to the creditor. Where the value of mortgaged property is insufficient to cover the mortgagee's claim, the remaining unsatisfied part of the claim is a third-rank claim for corporate bankruptcies and a second-rank claim for restructuring or natural person bankruptcy. In the event of bankruptcy of a natural person, an agreement may be reached not to sell the property under mortgage. In that case, the solvency restoration plan provides for monthly payments to the mortgagee.

Where the sale of mortgaged assets generates more funds than is necessary to settle with the mortgagee, the remaining portion of the funds is allocated to pay the claims of the other creditors.

The claims of the other creditors are satisfied based on claim ranking and stages.

In company bankruptcies, creditors' claims are satisfied in two stages. At the first stage, creditors' claims are paid without the interest and default penalties; interest and penalties are paid at the second stage. At each stage, the creditor's claims of each lower rank are satisfied after the creditor's claims of the superior rank in the respective stage have been completely satisfied. If the assets are insufficient to fully satisfy the claims of one rank in one stage, the said claims are to be satisfied in proportion to the amount due to each creditor.

First-rank claims are employee claims arising out of the employment relationship; claims for damage compensation due to mutilation or other bodily injury, contraction of an occupational disease or death as a result of an accident at work (these claims may be covered from the Guarantee Fund); and claims of agricultural businesses requesting payment for agricultural products sold (up to 40 per cent of such claims may be paid from the State budgetary funds allocated by the Ministry of Agriculture for that purpose).

Second-rank claims are claims in respect of taxes and other contributions to State and social insurance budgets and compulsory health insurance contributions; in respect of money borrowed on behalf of the State and loans secured by a guarantee provided by the State or a guarantee institution vouched for by the State; and in respect of support granted from European Union funds and State budget funds.

All other claims from creditors are third-rank claims.

In company restructuring, creditors' claims are satisfied in two stages. At the first stage, creditors' claims are paid without the interest and default penalties; interest and penalties are paid at the second stage.

First-rank claims are employee claims arising out of the employment relationship; claims for damage compensation due to mutilation or other bodily injury, contraction of an occupational disease or death as a result of an accident at work; claims from natural and legal persons requesting payment for agricultural produce delivered for processing; and creditors' claims secured by pledge and/or mortgage not exceeding the value of the assets that have been pledged and are not for sale during the restructuring.

Second-rank claims are the remaining claims from creditors, except third-rank claims and secured claims, where the pledged assets are not offered for sale during the restructuring.

Claims in respect of loans granted during the restructuring and not secured are satisfied after settling those of the first rank and before settling those of the second right.

Third-rank claims are non-employment claims from the members of the enterprise undergoing restructuring who became creditors of the enterprise before the institution of the restructuring proceedings and who, either alone or with other members, are in control of the enterprise undergoing restructuring.

At every stage, the creditors' claims of each lower rank are satisfied after the creditors' claims of the superior rank in the respective stage have been completely satisfied. If the assets are insufficient to fully satisfy the claims of one rank in one stage, the said claims are to be satisfied in proportion to the amount due to each creditor.

In natural person bankruptcies, creditors' claims are satisfied in two stages. At the first stage, creditors' claims are paid without the interest and default penalties; interest and penalties are paid at the second stage.

First-rank claims are employee claims arising out of the employment relationship; claims for damage compensation due to mutilation or other bodily injury, contraction of an occupational disease or death as a result of an accident at work (these claims may be covered from the Guarantee Fund); claims for money for child maintenance; and claims of agricultural businesses requesting payment for agricultural products sold (such claims may be paid from special funds allocated by the Lithuanian Ministry of Agriculture for that purpose).

In between the first and the second ranks fall creditors' claims arising out of self-employment and/or farming activities in the course of bankruptcy proceedings relating to a natural person and claims arising out of debt obligations in respect of self-employment or bankruptcy administration costs.

All other claims from creditors are second-rank claims.

At each stage, the creditor's claims of each lower rank are satisfied after the creditors' claims of the superior rank in the respective stage have been completely satisfied. If the assets are insufficient to fully satisfy the creditors' claims of one rank in one stage, the said claims are to be satisfied in proportion to the amount due to each creditor.

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

In the course of corporate bankruptcy proceedings, an arrangement with creditors may be reached. Upon signature of such an arrangement, bankruptcy procedures are terminated and the company continues its regular operations whilst implementing the arrangement.

In company bankruptcy, arrangements with creditors are possible at any stage of bankruptcy proceedings before entry into force of the court ruling liquidating the company due to bankruptcy. Such arrangements may be proposed by creditors, the administrator and the company's owners. The bankruptcy

administrator must suggest an arrangement with creditors prior to commencement of recovery from the assets of the owner of an enterprise with unlimited liability (where such an enterprise does not have assets or its assets are insufficient to cover the legal and administrative costs and to meet the creditors' claims). The arrangement should list the concessions granted by the creditors to the company, their claims, the company's commitments, the methods and time limits for meeting the creditors' claims and liability for non-compliance with the settlement.
A arrangement with creditors is deemed concluded if it has been signed by the creditors whose outstanding claims account for at least two-thirds of the value of all the outstanding claims remaining before the date of the arrangement. The arrangement is approved by the court or, under the out-of-court bankruptcy procedure, by the notary.
In the case of company restructuring and bankruptcy of a natural person, arrangements with creditors are not possible, though the restructuring procedure may be terminated and bankruptcy proceedings relating to a natural person may be terminated when creditors abandon their claims or the debtor pays all the creditors' claims approved by the court and included in the restructuring plan or the solvency restoration plan for a natural person.

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

After the company's assets have been sold in the event of a company bankruptcy, the company is liquidated and removed from the Register of Legal Entities. Any remaining outstanding claims of creditors are not settled. If any assets of the company emerge following the liquidation, their value will be used to satisfy any remaining outstanding claims of creditors.
In the event of restructuring, the company continues its normal operations and creditors enjoy the same rights as with a normally functioning company.
After the completion of the bankruptcy procedure for a natural person, creditors are entitled to require that the natural person satisfy any remaining outstanding claims for damage compensation due to mutilation or other bodily injury, for child maintenance funds, for payment of fines to the State for any administrative violations or criminal acts by the natural person and compensation of damage caused by criminal acts, and satisfaction of any remaining outstanding claims secured by pledge or mortgage (if the property pledged was not designated for sale during the bankruptcy procedure). Any other creditors' claims set out in the solvency restoration plan that remain outstanding are written off and creditors lose their right to claim satisfaction thereof.

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

In corporate bankruptcy, administrative costs are covered from the company's funds, including any costs incurred in the course of the bankruptcy procedure. Where a company does not have any funds or sufficient funds to cover the bankruptcy administration costs, they may be paid by the person who filed the bankruptcy petition or a bankruptcy administrator may be appointed who agrees to assume the risk that the funds obtained in the course of the bankruptcy procedure may be insufficient to cover the legal and administrative costs and in that case the costs of bankruptcy administration will be paid from the administrator's resources.
Upon instituting bankruptcy proceedings against a company, the court sets an amount of money that the administrator can use to cover the administrative costs of the company going bankrupt until the meeting of creditors approves the administrative costs estimate. For subsequent periods, the estimate of bankruptcy administration costs is approved by the creditors' meeting of the company in bankruptcy. The bankruptcy administrator does not have the right to exceed the approved estimate of administrative costs, other than where, for unforeseen reasons, urgent measures are necessary to protect the interests of the company and its creditors.
In corporate restructuring, the administrative costs are covered from the company's funds, including any costs incurred in the course of the restructuring procedure.
When instituting restructuring proceedings, the court approves the administrative costs estimate for the period from the date of entry into force of the court ruling instituting the restructuring proceedings to the date of entry into force of the court ruling approving the restructuring plan. The amount of restructuring costs for the next period is specified in the approved restructuring plan.
The costs of natural person bankruptcy administration are covered from the natural person's funds of any type, including those received in the course of bankruptcy proceedings. The bankruptcy administration costs estimate is approved and amended by the creditors' meeting, while the amount of remuneration for the bankruptcy administrator is specified in the commissioning contract between the natural person and the bankruptcy administrator.

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

Any transaction by the debtor that infringes upon creditors' rights may be challenged by the assigned insolvency administrator or an individual creditor, on the basis of *actio Pauliana* within a one-year period of limitation, which starts to run on the day when the transaction became known or should have become known. For a transaction to be successfully contested on the basis of *actio Pauliana*, existence of all of the following conditions is necessary:
The creditor must have an indubitable and valid right of claim, i.e. the debtor must have either failed to fulfil his/her obligation entirely or must have fulfilled in improperly;
the transaction at issue must infringe the creditor's rights. Creditors' rights are infringed where the transaction renders the debtor insolvent or where a solvent debtor prioritises another creditor, or the transaction, while not rendering the debtor insolvent, changes (reduces) the debtor's ability to discharge the obligation to the creditor, for instance, reduces the value of the debtor's assets (such a situation may occur, for instance, when the price received for property sold is significantly below the market price);
the debtor was not obliged to enter into the disputed transaction;
the debtor did not act in good faith, because he/she knew that the transaction would breach the rights of the creditors;
the third party that concluded the bilateral transaction with the debtor in exchange for a compensation did not act in good faith.
Additionally, at the time bankruptcy or restructuring, disposal of the debtor's property is restricted by law (see also the answer to question 10), and the debtor's transactions concluded in violation of those restrictions are invalid as of the moment they were concluded.

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Insolvency/bankruptcy - Luxembourg

1 Who may insolvency proceedings be brought against?

The Grand Duchy of Luxembourg has eight types of insolvency proceedings.
Three apply only to traders (natural and legal persons):
Bankruptcy proceedings, which are provided for by the Commercial Code (*Code de Commerce*), aim to liquidate the assets of a trader who has become insolvent and uncreditworthy.

Composition with creditors to prevent bankruptcy, which is provided for by the Law of 14 April 1886 on composition with creditors to prevent bankruptcy (*loi du 14 avril 1886 concernant le concordat préventif de la faillite*), is a procedure that is open, under certain conditions, to debtors who meet the criteria for bankruptcy. Where this composition involves the surrender of assets, its purpose, like bankruptcy, is to liquidate the assets of the trader concerned. However, it differs from bankruptcy in that the trader avoids the effects of bankruptcy proceedings.

Administration proceedings, which are provided for by the Grand-Ducal Order of 24 May 1935 establishing administration (*arrêté grand-ducal du 24 mai 1935 instituant la gestion contrôlée*), aim to reorganise the affairs of traders who request this. However, these proceedings can also be used where traders want their assets to be realised in the best possible way.

In addition to these proceedings, Luxembourg law (Article 593 *et seq.* of the Commercial Code) provides for a procedure whereby traders can obtain the suspension of payments under certain conditions.

A fourth procedure is open only to natural persons who are not traders: this is the over-indebtedness procedure, provided for by the Law of 8 January 2013 on overindebtedness (*loi du 8 janvier 2013 sur le surendettement*), which aims to enable applicants to improve their financial situation by establishing a debt repayment plan.

There are also insolvency procedures specifically for notaries, credit institutions, insurance companies and collective investment undertakings (as these are specific to a professional category or business sector, they will not be described in this fact sheet).

2 What are the conditions for opening insolvency proceedings?

1. Bankruptcy

Bankruptcy proceedings are opened by the debtor filing for bankruptcy, by one or more creditors applying for the debtor's bankruptcy or by a court.

Traders must file for bankruptcy with the registry of the district court (*tribunal d'arrondissement*) responsible for commercial cases for the trader's domicile or registered office. This must occur within one month of the date when the bankruptcy conditions are met.

Where one or more creditors of the debtor decide to apply for the trader to be declared bankrupt, they must use a court officer who, through a writ, orders the trader to appear before the district court responsible for commercial cases within eight days (fixed-date writ) so that a decision can be made on the merits of the bankruptcy application.

Bankruptcy proceedings can also be opened by a court based on the information available to it. In this case, the court must summon the bankrupt, through the court registry, to explain their situation to the court sitting in chambers.

Before declaring a trader bankrupt, the district court responsible for commercial cases (hereinafter 'the commercial court' – *tribunal de commerce*) must check whether the person or company in question meets the following three conditions:

status of trader: a natural person who carries out, as their usual profession (main or supplementary), acts described as commercial by law (e.g. the acts listed in Article 2 of the Commercial Code), or a legal person incorporated in one of the forms provided for by the amended Law of 10 August 1915 on commercial companies (*loi modifiée du 10 août 1915 concernant les sociétés commerciales*) (e.g. *société anonyme* (public limited company), *société à responsabilité limitée* (private limited company), cooperative, etc.);

cessation of payments: this means that unquestionable debts due for payment (e.g. wages, social security, etc.) are unpaid, with term or contingent debts and natural obligations not being sufficient; and

loss of creditworthiness: the trader can no longer obtain credit from banks, suppliers or creditors.

Although the refusal or inability to pay a single debt (regardless of the amount) that is unquestionable and due for payment is sufficient, in principle, to establish the state of cessation of payments, a simple cash flow problem does not imply the state of bankruptcy, provided that the trader can obtain the credit needed to continue trading and honour commitments.

2. Composition with creditors to prevent bankruptcy

Composition with creditors to prevent bankruptcy is reserved for 'unfortunate debtors acting in good faith'. These qualities are assessed by the court based on the circumstances of the case.

When the application is made, the commercial court appoints one of its judges to examine the applicant's situation and draw up a report.

Based on this report, the court may, or may not, agree a grace period to allow the trader to make composition proposals to the creditors.

3. Administration

Debtors must submit a reasoned application to the commercial court for the district where they have their main place of business or registered office in the case of a company.

Traders can only go into administration if they have become uncreditworthy or cannot meet all their commitments. In addition, the application must seek either to reorganise the debtor's business or realise their assets in the best possible way. Lastly, case-law requires debtors to act in good faith. In this context, the court has the discretion to assess whether or not, according to the facts and circumstances of the case, the trader has acted in good faith as required in order to benefit from this procedure.

4. Over-indebtedness

Over-indebtedness of natural persons is described as the situation where the debtor domiciled in the Grand Duchy of Luxembourg is clearly unable to meet all his/her non-professional debts that are due and falling due for payment and to honour the commitment that he/she has made to jointly and severally guarantee or pay the debt of a sole trader or a company, provided that he/she has not been a director, in fact or in law, of that company.

The collective debt settlement procedure involves three stages as follows:

agreed settlement stage, which occurs before the Mediation Commission for OverIndebtedness (*Commission de médiation en matière de surendettement*);

court-supervised reorganisation stage, which occurs before the magistrate's court (*juge de paix*) for the domicile of the over-indebted debtor;

personal recovery stage, also known as 'personal bankruptcy' (*faillite civile*), which occurs before the magistrate's court for the domicile of the over-indebted debtor.

It should be noted that the personal recovery stage, which is subsidiary to the other two stages in the collective debt settlement procedure, can be triggered only where the over-indebted debtor is in an irreparably compromised situation, which is described as the situation where the debtor cannot implement:

the measures of the agreed settlement plan, or

the measures proposed by the Mediation Commission as part of the agreed settlement, and

the measures determined in the court-supervised reorganisation proceedings.

It should also be noted that applications for the agreed settlement procedure must be sent to the chair of the Mediation Commission.

An application form for the agreed settlement procedure can be downloaded here.

In addition, creditors of the over-indebted debtor must file their claims with the OverIndebtedness Information and Advice Service (*Service d'information et de conseil en matière de surendettement*). A form for filing claims can be downloaded from the following address.

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?

1. Bankruptcy

Once the bankruptcy order has been made, bankrupts are automatically divested of the right to administer any of their assets, even those that may devolve on the bankrupt following the bankruptcy order.

This divestment covers all the bankrupt's movable and immovable assets. This mechanism aims to protect the interests of the body of creditors.

Generally speaking, the trustee goes to the bankrupt's premises to draw up an inventory of the assets located there. In this respect, the trustee must differentiate between those assets that fully belong to the bankrupt and those over which third parties may assert various property rights.

When realising the movable and immovable assets, the trustee ensures that any assets of the bankrupt are sold in the best interests of the body of creditors. In order to sell those assets, the trustee needs authorisation from the court. The movable and immovable assets must be sold as laid down by the Commercial Code. The proceeds must be deposited in the bank account opened in the name of the insolvency proceedings.

2. Over-indebtedness

The court arranges for the debtor's financial and social situation to be assessed in order to verify the claims and value the assets and liabilities.

Having decided to open the personal recovery proceedings and having determined that there are assets to be liquidated, the court then proceeds with the liquidation of the debtor's assets.

The court decides on any disputed claims and orders liquidation of the debtor's personal assets. Only furnishings needed for everyday life and non-professional assets essential for carrying out a professional activity are excluded. The assets of the over-indebted debtor are liquidated in the personal recovery proceedings in accordance with the objective of the law, which is to improve the debtor's financial situation by allowing him/her and his/her household to lead a life in keeping with human dignity.

The debtor's rights and actions in relation to his/her assets are exercised throughout the liquidation by a court-appointed liquidator.

The liquidator has six months to sell the debtor's assets on an amicable basis or to organise a forced sale.

Effects of the personal recovery proceedings:

Where the proceeds from the liquidation of assets are sufficient to satisfy the creditors, the court orders closure of the proceedings.

Where the proceeds from the liquidation of assets are insufficient to satisfy the creditors, the court orders closure due to insufficient assets.

Where the debtor has nothing other than the furnishings needed for everyday life and non-professional assets essential for carrying out a professional activity, the court orders closure due to insufficient assets.

Where the assets have no market value or would cost a disproportionate amount to sell in relation to their market value, the court orders closure due to insufficient assets.

Closure due to insufficient assets has the effect of cancelling all the debtor's non-professional debts.

However, the following are excluded from the cancellation of the debtor's non-professional debts:

debts that a guarantor or co-obligant has paid instead of the debtor;

debts referred to in Article 46 of the Law, i.e. current payments of maintenance debts and monetary amounts awarded to victims of intentional acts of violence due to bodily injury suffered.

However, debts referred to in Article 46 of the Law can be cancelled where the creditor concerned has agreed to the remission, rescheduling or cancellation of the debts in question.

4 What powers do the debtor and the insolvency practitioner have, respectively?

1. Bankruptcy

Once the bankruptcy order has been made, bankrupts are automatically divested of the right to administer any of their assets, even those that may devolve on the bankrupt.

Following this order, administration of the debtor's assets is entrusted to a trustee.

Where the bankrupt is a legal person, the insolvency estate consists of all the company's assets and liabilities, not including rights that partners may have in that capacity.

Trustees are chosen from among those people who can offer the best guarantees in terms of the intelligence and accuracy of their management.

In practice, judges at the district court responsible for commercial cases choose trustees from the list of lawyers. However, in cases where this is required in the bankrupt's interests, the court can also appoint notaries or accountants/auditors.

As with all proceedings involving traders, the commercial court has jurisdiction in terms of bankruptcy.

It is therefore the commercial court that makes the bankruptcy order, determines the date of cessation of payments, appoints the various participants (official receiver, trustee), sets the date for claims to be filed and the date for the claim verification report to be completed, and orders closure of the bankruptcy proceedings.

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.

The official receiver is responsible for supervising the bankruptcy operations, management and liquidation. During a hearing, he/she reports on any disputes that may arise and orders any urgent measures needed to secure and preserve the insolvency estate. He/she also chairs any meetings of the bankrupt's creditors.

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.

2. Over-indebtedness

As regards the debtor's obligations and the effect on the debtor's assets of opening the collective debt settlement procedure, it should be noted that the debtor is subject to a duty of good behaviour.

During the good behaviour period, the debtor must:

cooperate with the authorities and bodies involved in the procedure by agreeing to provide spontaneously any information on his/her assets, income and debts, and any changes occurring in his/her situation;

carry out, insofar as this is possible, a paid activity in line with his/her abilities;

not worsen his/her insolvency and act dutifully to reduce his/her debts;

not favour a particular creditor, except for maintenance creditors for current payments, landlords for current rent payments for housing meeting the debtor's basic needs, suppliers of goods and services essential for a dignified life, and creditors for current payments in relation to enforcement of the debtor's payment of damages awarded following intentional acts of violence due to bodily injury suffered; – honour the commitments made as part of the procedure.

Two types of body are involved depending on whether the procedure is at the **agreed or court stage**.

The **agreed settlement stage** occurs before the Mediation Commission. The Mediation Commission's members are appointed by the Minister. It has a chair and a secretary, and it meets at least once a quarter. In order to be eligible for the Mediation Commission, applicants must submit a criminal record

certificate, among other documents. Once appointed, members are under a legal obligation to inform the Minister of any criminal proceedings or convictions against them so that they can be replaced. The Mediation Commission's members receive an allowance of EUR 10 per session and its chair receives an allowance of EUR 20 per session.

The Mediation Commission decides in particular whether to accept applications for the procedure and whether claims filed are admissible. It also approves or amends draft agreed settlement plans that are submitted to it following investigation by the Over-Indebtedness Information and Advice Service (hereinafter 'the Service').

If, within six months of the Commission agreeing to the procedure, the proposed plan has not been accepted by the interested parties, the Commission draws up a report recording the failure of the agreed settlement procedure. Within two months of the date when this report is published in the register, the debtor can initiate court-supervised reorganisation proceedings before the magistrate's court for his/her domicile. If the debtor does not make this application within the time-limit indicated, he/she can initiate a new collective debt settlement procedure only after two years have passed from the date when the report was published in the register.

If the **court-supervised reorganisation stage** is initiated, the parties will be summoned before the magistrate's court, which can require them to provide all the documents or information allowing the debtor's assets and/or liabilities to be established.

Based on the information submitted, the court draws up a reorganisation plan, which will include measures enabling the debtor to honour his/her commitments.

The reorganisation plan drawn up by the court applies for a maximum of seven years and may lapse in a limited number of cases (in particular where the debtor has not fulfilled his/her obligations under the reorganisation plan).

3. Administration

In administration proceedings, debtors forfeit their decision-making powers to the administrators, who are entrusted with drawing up an inventory and producing either a reorganisation plan or an asset realisation and distribution plan. Debtors are also prohibited from acting in a way that may hinder the work of the administrators appointed in these proceedings.

4. Composition with creditors

During the composition with creditors procedure, the debtor cannot sell or mortgage anything or commit to anything without authorisation from the delegated judge. The delegated judge draws up the inventory and analyses the state of the business, and may, if necessary, obtain the assistance of experts.

5 Under which conditions may set-offs be invoked?

The various proceedings referred to above do not put paid to the preferential claims of creditors, except for the composition with creditors procedure.

1. Composition with creditors

Creditors benefiting from charges over property who take part in the vote lose their status as preferential creditors (Article 10 of the Law of 14 April 1886).

2. Bankruptcy

'In terms of bankruptcy, it is settled case-law that, after the bankruptcy order has been made, no legal, court-ordered or agreed set-off is possible any longer, even between pre-existing claims, if they lacked, up to that point, one of the three qualities of liquidity, payability and fungibility. Although the bankruptcy order can therefore prevent any legal set-off, it should not be inferred that this is absolute or retroactive. The bankruptcy order does not affect **legal set-off** where the conditions for this were met before the bankruptcy proceedings were opened. The Court of Appeal (*Cour d'appel*) has ruled that "*the suspect period does not prevent this type of set-off. Legal set-off is possible despite the cessation of payments. It is not an act of the debtor, as it occurs without his knowledge; Article 445 of the Commercial Code does not cover this*."

With regard to **court-ordered set-off**, this cannot be ordered after collective proceedings have been opened. However, this can occur during the suspect period, provided that the relevant order has become final (not open to appeal). In this case, set-off can have an effect only from the date of the order.

With regard to **agreed set-off**, this quite clearly cannot occur after collective proceedings have been opened. Moreover, it cannot occur during the suspect period, because it is regarded by Article 445 of the Commercial Code as an abnormal method of payment that is sanctioned by invalidity [1].'

However, it should be noted that the Law of 5 August 2005 on financial guarantees (*loi du 5 août 2005 sur les garanties financières*) provides for specific exceptions to the rules described above with regard, for example, to set-off agreements that may be concluded between parties on the day when insolvency proceedings are opened (or even after this – see Article 18 *et seq.* of the Law of 5 August 2005 on financial guarantees).

3. Administration

As regards administration, composition with creditors or suspension of payments, set-off cannot be carried out after debtors have lost the freedom to dispose of their rights and assets.

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[1] '*La compensation comme garantie d'une créance sur un débiteur en faillite*', Pierre HURT, J.T., 2010, p. 30.

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

One of the main difficulties that arises for trustees after bankruptcy proceedings have been opened concerns current contracts concluded before the bankruptcy was ordered. Excluding employment contracts that automatically end on the date when the bankruptcy is ordered (Article 121 of the Labour Code (*Code du travail*)), it is traditionally accepted that current contracts continue until they are terminated by the trustee.

The trustee must weigh up the interests involved when deciding whether or not these contracts should temporarily continue. If there are clauses in the contract that terminate it if one of the parties is declared bankrupt, it should be decided whether or not the trustee intends to dispute the applicability of these clauses (bearing in mind that the validity of these clauses is debatable; for example, these clauses are regarded as invalid in Belgium in the context of commercial leases).

In any event, in principle, the trustee is solely responsible for choosing between performance or termination of these contracts. If disputed by the other contracting party which invokes the automatic termination of the contract due to bankruptcy, the trustee exposes himself/herself to legal proceedings with an uncertain outcome, and to the creation of new costs for the insolvency estate [1].

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[1] Sources: 'Les procédures collectives au Luxembourg', Yvette HAMILIUS and Brice HELLINCKX (authors of Chapter 3), Editions Larcier, 2014, p. 86.

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

1. Composition with creditors, bankruptcy, suspension of payment and administration proceedings

In composition with creditors, bankruptcy, suspension of payment and administration proceedings, enforcement measures against traders and their assets are suspended. However, no legal text applicable in the Grand Duchy prevents creditors from taking measures designed to preserve the integrity of their debtor's assets.

In all these proceedings, debtors no longer have the freedom to dispose of their assets. 'From the bankruptcy order until closure of the proceedings, no legal action can be validly brought against the bankrupt alone, with regard to assets that form part of the insolvency estate' (Lux. 12 January 1935, Pas. 14, p. 27). 'Unsecured creditors and those with a general preferential claim cannot, during the bankruptcy, seek an order against the bankrupt or even the trustee, but can only act by filing their claim or bringing an action for their claim to be recognised' (Cass. 13 November 1997, Pas. 3030, p. 265).

In certain cases, however, acts of disposal may be carried out with the backing of the person delegated by the commercial court (with regard to suspension of payments or administration).
Moreover, the bankruptcy order renders debts not due as payable and interrupts the application of interest.

2. Over-indebtedness

In terms of collective debt settlement, the Mediation Commission's decision to accept the debtor's application automatically suspends any enforcement measures against the debtor's assets, except for measures relating to maintenance obligations, interrupts the application of interest and renders debts not due as payable.
If the agreed settlement stage fails, the magistrate's court before which the court stage will be heard can suspend any enforcement measures under the same conditions as indicated above.

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

Litigation already in progress when the insolvency proceedings are opened can be validly continued by the trustee acting in that capacity. However, applicants in such cases must regularise the proceedings by involving the trustee who alone has the power to represent validly the bankrupt debtor.
Where the case goes against the debtor, the creditors who brought the proceedings prior to the bankruptcy obtain a security that they can use in the liquidation. However, this security cannot be enforced as the bankruptcy order results in the debtor being divested of the right to administer any assets.

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

1. Bankruptcy

Publication of the bankruptcy notice in one or more newspapers distributed in Luxembourg informs creditors that their debtor has gone bankrupt. They must then file their claims, together with their securities, with the registry of the district court responsible for commercial cases, within the time-limit set in the bankruptcy order. The court clerk records the claims and provides a receipt.
Claim declarations must be signed and must include the surname, forename, profession and address of creditors, as well as the amount of the claim, reasons for the claim, and any guarantees or securities associated with the claim. The various claims filed are then verified in the presence of the trustee, bankrupt debtor and official receiver.
During this procedure, if there are any disputes, creditors may be summoned to explain the details of their claim and its merits or exact amount during cross-examination.
If the trustee has been able to identify assets that can be distributed between the creditors, he/she summons the latter to a presentation of accounts meeting during which the creditors can give an opinion on the distribution plan.
If there are insufficient assets, closure of the bankruptcy is ordered.
If the trustee does not fulfil his/her duties to the satisfaction of the creditors, the latter can send their complaints to the official receiver who, as necessary, may replace the trustee.

2. Administration

In administration proceedings, the administrators must provide the creditors with details of the reorganisation or asset realisation plan.
In this case, the creditors may be invited to make comments. Within 15 days of the creditors being informed, they must tell the registry whether they accept or oppose the plan, which cannot be implemented unless over half of the creditors whose claims represent over half of the liabilities accept this plan.

3. Composition with creditors

In the composition with creditors procedure, a meeting of creditors is convened to allow them to discuss the composition proposals made by the delegated judge. The creditors must therefore declare their claims and also state whether or not they accept the composition proposals.
The creditors may then also make comments during the composition approval hearing. They may also lodge an appeal against the order approving the composition where they were not invited to the meeting of creditors or where they voted against the composition proposals.

4. Over-indebtedness

In the first instance, during the agreed settlement stage, creditors must file their claims with the Over-Indebtedness Information and Advice Service. Creditors can then take an active part in the adoption of an agreed settlement plan by said Service.
The Mediation Commission for Over-Indebtedness then convenes the creditors and sets out the proposals made in the agreed settlement plan. At least 60 % of the creditors whose claims represent 60 % of the body of claims must then state that they accept the agreed settlement plan in order for it to be regarded as accepted. No response from creditors is deemed to mean that they agree.

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

Trustees in a bankruptcy represent both the bankrupt person and the body of their creditors. In this dual capacity, they not only are responsible for administering the bankrupt's assets, but are also authorised to monitor, as claimants or defendants, all actions that seek to preserve the assets that must be used as security for the creditors, and also to recover or increase those assets in the common interests of the latter (Court of Appeal, 2 July 1880, Pas. 2, p. 49).
The trustee may bring any actions in respect of the common security for the creditors, consisting of the bankrupt's assets, i.e. that seek to recover, protect or liquidate those assets (Court of Appeal, 25 February 2015, Pas. 37, p. 483).
As regards current contracts following the bankruptcy order, the trustee must decide whether these should be terminated or whether it would be better, where they may release assets, to continue their performance with a view to subsequently meeting the bankrupt's liabilities.

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 creditors must declare their claims, regardless of the nature of the claim and whether or not they have a preferential claim. However, the exception to this procedure is claims arising from the estate, i.e. those claims arising subsequently and in the interests of the bankruptcy proceedings (e.g. trustee's costs, rent falling due after the bankruptcy order, etc.).
As regards claims that arise from the estate after the opening of the insolvency proceedings and that result from the administration of the bankruptcy or the continuation of certain activities of the bankrupt business, these are honoured first before the rest of the assets are distributed among the body of creditors.
Claims arising from the estate are therefore honoured in all cases before those of other creditors.

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

1. Bankruptcy

In bankruptcy proceedings, the bankruptcy order will be published in various ways (press, registration with the commercial court) so that the situation is brought to the attention of the bankrupt debtor's creditors, who can then can make themselves known (Article 472 of the Commercial Code).
Creditors must then file their claim with the registry of the commercial court and submit their supporting documents (Article 496 of the Commercial Code).
A form enabling creditors to make this claim declaration is available online at the following address.
Claims are verified by the trustee responsible for the liquidation and may be disputed by the latter (Article 500 of the Commercial Code).
Any claim filed that is disputed is referred to the court.

However, if there are any disputes that, due to their subject-matter, do not fall within the jurisdiction of the district court responsible for commercial cases, they are referred to the competent court for a decision to be made on their merits. They are also referred to the district court responsible for commercial cases for an order to be made on them in accordance with Article 504, on the amounts that may be claimed by the creditors concerned within the context of the composition discussions (Article 502).

2. Composition with creditors

In the composition with creditors procedure, the debtor applying for composition must specify, in the application, the identities and addresses of the creditors and the amounts of their claims (Article 3 of the Law of 14 April 1886).

The creditors are notified by registered letter (Article 8 of the Law of 14 April 1886) inviting them to take part in the composition meeting.

The invitation will also be published in the press.

During the composition meeting, the creditors declare the amounts of their claims.

As indicated above, creditors with claims secured by charges over property who take part in the vote lose their status as preferential creditors (Article 10 of the Law of 14 April 1886).

3. Suspension of payments

In the suspension of payments procedure, the debtor must also submit a list of creditors, indicating their names, the amount of their claims and their addresses.

Creditors are invited to a meeting by registered letter (Article 596 of the Commercial Code) and in the press.

During the meeting, they must declare the amounts of their claims (Article 597 of the Commercial Code).

4. Administration

In administration proceedings, there is no procedure for the filing and acceptance of claims. Debtors must inform the court of the identities of their creditors in their application.

These creditors are subsequently informed by the court of the reorganisation or asset realisation plan drawn up by the administrators appointed by the court.

5. Over-indebtedness procedure

Within one month of the publication of the collective debt settlement notice in the register, creditors of the over-indebted debtor must file **their claims with the OverIndebtedness Information and Advice Service**.

The claim declaration must comply with Articles 6 and 7 of the Grand Ducal Regulation of 17 January 2014 implementing the Law of 8 January 2013 on over-indebtedness (*règlement grand-ducal du 17 janvier 2014 portant exécution de la loi du 8 janvier 2013 concernant le surendettement*).

A declaration form is available for creditors to use.

The Mediation Commission analyses whether the claims are admissible.

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

The basic principle in bankruptcy law is that each creditor must receive an identical share proportional to the amount of their claim.

Some creditors with a security or preferential claim are paid first.

Preferential creditors are ranked in a legal order that is public policy (property landlords, mortgagees, creditors with securities over the business capital and, in particular, the public treasury in the broadest sense).

In general, the trustee refers to Articles 2096 to 2098, 2101 and 2102 of the Civil Code (*Code civil*).

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, first paragraph, of the Commercial Code.

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/she draws up an asset distribution plan that is submitted in the first instance to the official receiver. In accordance with Article 533 of the Commercial Code, the trustee invites all creditors to the presentation of accounts meeting by registered letter, to which he/she attaches a copy of the asset distribution plan.

The bankrupt must be served notice of the meeting by a court officer, or by publication in a Luxembourg newspaper.

Unless the presentation of accounts by the trustee is disputed by a creditor, the trustee submits the minutes of the presentation meeting, based on the asset distribution plan, to the official receiver and the court clerk for signature.

Following the presentation of accounts, the trustee pays the creditors.

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

1. Bankruptcy

In bankruptcy proceedings, when the payments have been made, the trustee can apply for the proceedings to be closed, which is followed by the closure order that, as its name suggests, ends the bankruptcy proceedings.

Under Article 536 of the Commercial Code, bankrupts who have not been declared criminally bankrupt on a negligent or fraudulent basis can no longer be pursued by their creditors, unless their fortunes improve within seven years of the order closing the proceedings due to insufficient assets.

Under Article 586 of the Commercial Code, bankrupts who pay in full all sums owed in terms of principal, interest and costs can be discharged by submitting an application in this respect to the Supreme Court of Justice (*Cour supérieure de justice*).

2. Composition with creditors, suspension of payments, administration

In composition with creditors, suspension of payments and administration proceedings, the court's decision approving the relevant measure ends the proceedings.

The court can impose civil or criminal penalties on the bankrupt debtor.

If the court finds that the bankruptcy was caused by serious and blatant misconduct on the part of the bankrupt, it can prohibit the latter from carrying out a business activity either directly or through another person. This prohibition also applies to holding a position involving decisionmaking powers within a company.

Other civil penalties include, for bankruptcies of commercial companies, the possibility of extending the bankruptcy to their directors and the possibility of actions based on Articles 1382 and 1383 of the Civil Code (general legal liability) and on Articles 59 and 192 of the Commercial Companies Law (*loi sur les sociétés commerciales*).

Criminal penalties (criminal bankruptcies) can also be imposed on the bankrupt.

In compositions with creditors, persons benefiting from this procedure must reimburse their creditors if their fortunes improve (Article 25 of the Law of 14 April 1886 on composition with creditors to prevent bankruptcy).

Composition with creditors has no effect on the following debts:

taxes and other government duties;

claims guaranteed by preferential rights, mortgages or collateral;
claims in respect of maintenance.

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

Following closure of the insolvency proceedings, if there are any assets, creditors receive the full amounts or a proportion of the amounts of their claims in accordance with the distribution conditions accepted in the closure order.
If bankrupts have not been declared criminally bankrupt on a negligent or fraudulent basis, they can no longer be pursued by their creditors, unless their fortunes improve within seven years of the order closing the bankruptcy proceedings.
Creditors can also bring an action based on Articles 1382 and 1383 of the Civil Code in order to invoke the general legal liability of directors of the bankrupt, or an action based on Articles 59 and 192 of the Commercial Companies Law (liability of administrators and managers in the performance of their mandate).

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

The costs of the bankruptcy application are included in the costs of the insolvency estate.
As these are costs that arise in the interests of the bankruptcy proceedings, they are paid from the bankruptcy assets before the trustee distributes the remainder of the assets to the various creditors.
The Law of 29 March 1893 on legal aid and deficit proceedings (*loi du 29 mars 1893 concernant l'assistance judiciaire et la procédure en débet*) sets out, in Articles 1 and 2, the various costs that may result from formalities required by insolvency proceedings and determines the order of their payment where there are insufficient assets.
The competent district court sets the trustee's fees based on the Grand Ducal Regulation of 18 July 2003 (*règlement grand-ducal du 18 juillet 2003*).
The trustee must submit, to the district court responsible for commercial cases, a statement of costs and fees based on the assets recovered.
Article 536-1 of the Commercial Code provides, in its second paragraph, that the costs and fees of bankruptcies closed due to insufficient assets will be advanced by the Office of Indirect Taxes (*Administration de l'Enregistrement*) under the conditions laid down by the Law of 29 March 1893 on legal aid and deficit proceedings.

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

1. Bankruptcy

The bankruptcy order can set the date of cessation of payments by the bankrupt at a date prior to that of the order. However, this date cannot precede the order by more than six months.
To protect the interests of creditors, the period between the cessation of payments and the order is regarded as the '**suspect period**'.
Certain acts carried out during this period, where they may be detrimental to the rights of creditors, will be **null and void**. These involve in particular:
any acts in relation to movable or immovable property that the bankrupt has sold at no cost or in return for payment where the sale price is clearly much lower than the value of the property in question;
all payments made in cash or by transfer, sale, offsetting or otherwise for debts that have not yet fallen due;
all payments made other than in cash or using commercial instruments for debts falling due;
any mortgage or any other property rights granted by the debtor for debts contracted before the cessation of payments.
For other acts, however, the principle of nullity is not automatic.
As a result, certain **payments made by the bankrupt** for debts falling due and any other acts carried out in return for payment during the suspect period may be voided if it is proven that the third parties who received the payments or who negotiated with the bankrupt **were aware of the cessation of payments**.
When a creditor knows that a debtor is unable to honour commitments, that creditor must not seek to be treated preferentially to the detriment of the general body of creditors.
Mortgage and preferential rights that have been validly acquired may be registered up to the date of the bankruptcy order. However, rights registered in the **10 days preceding the date of cessation of payments** or thereafter may be declared null and void if more than 15 days have passed between the date of the mortgage deed and the date of registration.
Lastly, any **acts carried out or payments made in fraud of creditors**, i.e. where done by the debtor in full knowledge of the detriment that this will cause to the creditor (i.e. by reducing the insolvency estate, not respecting the ranking of claims, etc.) are deemed null and void, whatever the date on which they occurred.
The suspect period concept does not apply to **financial guarantee contracts** or in cases of **future claims transferred to a securitisation body**.

2. Composition with creditors

During the procedure to obtain composition with creditors, debtors may not transfer, mortgage or commit anything without authorisation from the delegated judge.

3. Administration

From the date of the decision appointing a delegated judge to produce the inventory of the business, the trader cannot, under threat of nullity, transfer, establish securities or mortgages over, commit or receive movable capital assets without written authorisation from the delegated judge.
It should also be noted that the law on administration provides for criminal penalties for traders who have concealed part of their assets, exaggerated the amount of their liabilities or involved creditors whose claims have been exaggerated.

4. Over-indebtedness

The judge can, where applicable, appoint persons responsible for providing social, educational or financial management assistance to ensure that the part of the debtor's income that is not allocated to repay debts is used for the purposes for which it is intended.
In carrying out their work, these persons are authorised to take any measures designed to prevent this part of the income from being diverted from its natural purpose or the interests of the debtor's household being harmed.

Last update: 29/10/2019

Insolvency/bankruptcy - Hungary

1 Who may insolvency proceedings be brought against?

Insolvency proceedings for legal persons are governed by Act XLIX of 1991 on bankruptcy and liquidation proceedings (Bankruptcy Act).
The Bankruptcy Act regulates two types of insolvency proceedings: bankruptcy and liquidation proceedings.
Bankruptcy proceedings are reorganisation proceedings the purpose of which is to grant a debtor facing insolvency a stay of payment with the view to agreeing on a voluntary arrangement and to making an attempt to enter such an arrangement in order to re-establish solvency.

Liquidation proceedings are proceedings the purpose of which is for creditors to obtain satisfaction according to specific rules when an insolvent debtor is dissolved without a legal successor – in the course of a proceeding aimed at distributing the total assets of the insolvent estate of the debtor among the creditors. However, the liquidation proceeding must be terminated, if the debtor has paid in full their debt and the costs of the proceeding or if a voluntary arrangement on the conditions of debt settlement is entered into with their creditors and the arrangement has been approved by the court.
Laws governing the Hungarian branches of undertakings with foreign registered offices, civil society organisations and undertakings of the financial sector (credit institutions, financial undertakings, insurance undertakings, investment firms, public warehouses), for instance, include special, derogating rules. Bankruptcy proceedings do not exist for undertakings of the financial sector, however supervisory bodies have the possibility to intervene as soon as the early stages of any deterioration in their financial standing in order to avoid insolvency and funds must be created (Damage Settlement Fund, Investor Protection Fund, Deposit Insurance Fund) to protect customers and to compensate them.
In the case of undertakings of the financial sector, liquidation may be brought before a court by the Hungarian National Bank acting under its powers of financial supervisory authority after it has revoked their license for pursuing such activities.
The Act on civil society organisations includes some derogating rules concerning the bankruptcy and liquidation proceedings of civil society organisations (associations, foundations), otherwise the provisions of the Bankruptcy Act apply.

Debt settlement proceedings of natural persons (personal bankruptcy)

Act CV of 2015 on debt settlements of natural persons entered into force on 1 September 2015. The Act aims to lay down a legal framework for debt settlement in addition to providing bankruptcy protection through cooperation between a debtor and their creditors. The Act primarily protects mortgage debtors, in particular those who have been in arrears long-term, are indebted to several creditors and whose residential property is threatened by a forced sale.
The proceedings start out of court, coordinated by the first mortgage lender. Court bankruptcy proceedings are opened if there is no settlement out of court. At first, the court proceedings also aim for an agreement to be reached, but if such agreement is not voted in favour of, the court determines the conditions for settling the debt.
The Government has established the Family Insolvency Service of the State. This organisation plays an important role in debt settlement proceedings. The Family Insolvency Service verifies whether the debtor meets statutory requirements, keeps State records of the proceedings' data and employs family administrators. Family administrators carry out preparatory and collaborative tasks for the court in the course of debt settlement before the court, enforce the court's decisions, support the debtor, oversee the management of the debtor's household, sell the debtor's commercially valuable assets and pay the creditors.
The outcome of successful debt settlement is that debt discharged in the course of the proceedings cannot be claimed later on from the debtor and the creditors receive a specific proportion of their claim within a predictable period of time.
The debt settlement proceedings of natural persons are not yet notified under Regulation (EU) No 2015/848 of the European Parliament and of the Council.
In accordance with the Bankruptcy Act **bankruptcy proceedings** may be initiated by the debtor organisation with the approval of its principal decision-making body, using a form – legal representation is compulsory during the proceedings. The debtor may not submit such an application if they are the subject of a pending bankruptcy proceeding or a decision of first instance has been passed ordering the debtor to be liquidated. The conditions and time limitations for the admissibility of a renewed application for initiating bankruptcy proceedings are the satisfaction of creditor's claims which existed or arose during the previous bankruptcy proceeding, the lapse of two years from the final conclusion of the previous bankruptcy proceeding or in case the previous application was rejected ex officio, the lapse of one year since the final order in that matter was announced.
As a general rule, if the debtor is insolvent **liquidation proceedings** may be brought at the request of the debtor or their creditors or ex officio by the court in certain cases specified under the Bankruptcy Act. The Bankruptcy Act explicitly states who may bring liquidation proceedings and regulates the rules for proceeding either at request or ex officio.
Both types of proceeding are **collective debt settlement proceedings**, the debtor's creditors must participate in the proceedings and they may not seek the enforcement of their claims in another manner or in other proceedings against the debtor during these proceedings.

2 What are the conditions for opening insolvency proceedings?

Bankruptcy proceedings:

Bankruptcy proceedings may be petitioned by the director of the debtor, while representation by a lawyer or legal counsel is compulsory.
At any one time only one bankruptcy proceeding may be initiated against the debtor and no liquidation proceeding against them may be pending either.
Renewed bankruptcy proceedings may only commence if the debtor has settled their debts claimed in the previous proceeding and two years have not lapsed since. And if the court rejected the previous bankruptcy proceeding ex officio for formal defects, no renewed bankruptcy proceedings may be initiated for one year.

Liquidation proceedings

Liquidation proceedings may be brought by the debtor, a creditor, the administrator who participated in the previous voluntary winding-up proceeding or a court or administrative authority in cases specified by law. For instance, a liquidation proceeding is brought by the court if no voluntary arrangement was entered into in the course of the bankruptcy proceeding or if the dissolution of a firm seriously infringing the law is ordered under its powers of legal supervision as the commercial court.

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 debtor's assets of the insolvent estate are the sum of all fixed assets and current assets within the meaning of accounting legislation.
Any increases in assets obtained during the bankruptcy proceedings also form a part of the assets of the insolvent estate.
The debtor retains rights related to the management of the assets of the insolvent estate, but under oversight by the administrator. In liquidation proceedings the debtor does not retain the rights related to the management of the assets of the insolvent estate: those rights are transferred to the liquidator. The liquidator is the legal representative of the debtor organisation and carries out the registration and assessment of creditors' claims, the realisation of assets and the distribution of proceeds among creditors under court oversight.

4 What powers do the debtor and the insolvency practitioner have, respectively?

In bankruptcy and liquidation proceedings a **debtor** within the meaning of the Bankruptcy Act may be an economic operator listed in the Act. In bankruptcy proceedings the proceeding is brought by the debtor, who may continue their economic activities during the proceeding. The executive officers and owners of the debtor are not restricted in the exercise of their rights, but they may only exercise their rights without infringing the rights provided for the administrator by law. The debtor carries out the registration and ranking of claims in collaboration with the administrator and with the involvement of the administrator prepares a programme and a proposal for composition negotiations for the purpose of obtaining a composition aimed at restoring or preserving solvency. The composition contains the agreement between the debtor and the creditors on the conditions of the settlement of the debt and all else they deem important for the reorganisation.

Up to their commencement, a **creditor** in bankruptcy and liquidation proceedings means a person who has past due pecuniary claims or claims expressed in monetary terms based on a final and enforceable decision of a court or public authority or that are recognised or not contested by the debtor. In bankruptcy proceedings creditor also means any person whose claims falling due during the bankruptcy proceeding or afterwards have been registered by the administrator or any person whose claims have been registered by the liquidator in a liquidation proceeding.
An **administrator** in bankruptcy proceedings is a legal person appointed by a court, authorised to carry out the tasks of an insolvency practitioner. The administrator must appoint a person employed by them with the appropriate qualifications to carry out the activities of administrator. This person's duty is to monitor the debtor's economic activities for the purpose of agreeing on a composition, while keeping in mind the creditors' interests, to register creditors' claims, to collaborate in the drafting of a proposal for the composition and to countersign the minutes of resolutions adopted at the composition negotiations.
Liquidator means a liquidator organisation (a legal person authorised to carry out the tasks of an insolvency practitioner) appointed by the court, who is the legal representative of the organisation under liquidation and who at the same time guarantees the creditors' interests and carries out tasks prescribed by law. Legislation prescribes strict personal and professional requirements for liquidator organisations, including regular professional training.
The liquidator organisation appoints an insolvency administrator to conduct the activities of a liquidator.
The name of the liquidator organisation and the insolvency administrator are also entered in the court register of legal persons.
Bankruptcy and liquidation proceedings are **non contentious civil proceedings before a court.** In matters not regulated by the Bankruptcy Act, the rules of the Code of Civil Procedure apply, with derogations arising from the specificities of non-contentious proceedings. Bankruptcy proceedings are ordered by the court while liquidation proceedings are ordered by the court as a result of the debtor being declared insolvent or in other cases specified by law or on the basis of a request from another court, public authority or the administrator. At the opening of the proceeding the court appoints the administrator or liquidator from the list of liquidators. When liquidation proceedings are brought, the court appoints – at the request of the creditors – a liquidator with the competence of a temporary administrator to supervise the activities of the debtor until the liquidation is ordered.
Objections submitted against any unlawful measures or omissions by the administrator or liquidator are adjudged by the court and in case of an unlawful measure or omission the court requires the administrator or liquidator to conduct their activities in accordance with the law and in case this is breached, the administrator or liquidator is removed from the proceeding and a new administrator or liquidator is appointed.
During bankruptcy proceedings the debtor is due bankruptcy protection, enforcement proceedings are suspended and the debtor is granted a stay of payment or a moratorium on the payment of previously incurred debts.
If the majority prescribed by the Bankruptcy Act accepts the voluntary arrangement and the arrangement is in compliance with statutory requirements, the court approves the arrangement and the debtor is bound by it.
If a voluntary arrangement is not agreed upon, the court orders the debtor to be wound up ex officio.
An agreement between the debtor and the creditors may also be reached in liquidation proceedings. The court sets the date for composition negotiations in the course of the liquidation proceeding and if the vote on the voluntary arrangement is favourable and the arrangement is in compliance with legislation, the court approves it. In liquidation, the conditions for the approval of a voluntary arrangement are that through the arrangement the debtor will cease to be insolvent and priority claims will be settled or cover for such claims is available.
The court decides on registering the bankruptcy or liquidation proceedings as closed or on the termination of the proceedings.
If the liquidation proceedings are closed without a legal successor to the debtor, upon notification from the court the commercial court strikes the debtor dissolved by liquidation off the commercial register, or the civil society organisation from the register of civil society organisations.
In liquidation proceedings the payment of employees' salaries is guaranteed from funds from the Wage Guarantee Fund, subject to the conditions laid down in the Act on the Wage Guarantee Fund.
Legal consequences of bringing the proceedings:
In the course of bankruptcy proceedings, the court takes steps to publish an immediate **temporary stay of payment** in the Companies' Gazette at the debtor's request, in accordance with the Bankruptcy Act. The merits of the request are subsequently examined, when the court takes its decision to reject the request ex officio in cases determined by law, or if this is not the case, takes a decision to order bankruptcy proceedings. Bankruptcy proceedings begin with the publication of the order to that effect in the Companies' Gazette. As a consequence of the opening of the bankruptcy proceedings the debtor is due a **stay of payment** for the performance of monetary claims up to 0 hours on the second working day following the 120th day (with a few exceptions) and the moratorium may even be extended for up to 365 days. During the period of the stay of payment only the payment of claims indicated in the legal act may be effected, legal consequences related to non-performance or late performance of payment obligations do not occur, the enforcement of monetary claims against the debtor are suspended, thus the debtor gains a realistic opportunity to prepare a programme aimed at restoring solvency and settling their debts.
If the court declares the debtor insolvent because any **reason for insolvency** defined under the legal act exists, the liquidation of the debtor is ordered in an order and following its entry into force a liquidator is appointed through an order published in the Companies' Gazette which also contains a call for creditors to notify their claims. Ownership rights cease when the liquidation proceeding is ordered, which serves to protect the assets of the insolvent estate, and from the starting date of the liquidation only the liquidator acting as the debtor's representative may make legal statements concerning the debtor's assets. On the starting date of liquidation every debt of the economic operator expires (becomes overdue).
Liquidation is aimed at distributing all assets of the debtor among their creditors and even enforcement proceedings against assets subject to the liquidation proceedings must be terminated. Contentious and non-contentious proceedings begun before the starting date of the liquidation continue before the court seized. Following the starting date of the liquidation any monetary claim related to the assets of the insolvent estate may only be asserted under the liquidation proceeding. Any restraint on alienation and encumbrance established on the debtor's real property or other assets ceases on the starting date of liquidation, while repurchase rights and options to purchase, as well as liens cease when the asset is sold. A person entitled may satisfy their claim from a security deposit provided by the debtor up to the starting date of liquidation, afterwards the person entitled must hand over the remaining amount to the liquidator.

5 Under which conditions may set-offs be invoked?

During a liquidation proceeding each creditor may assert a claim against the debtor only by registering for the proceeding, no set-off can be invoked out of court, except for close-out netting applied on the basis of international trade conventions. If however, there is a previous lawsuit pending between the creditor and the debtor, the creditor may set-off any claims asserted in the lawsuit against his debt towards the debtor.

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

The opening of liquidation proceedings in themselves do not have the legal effect of terminating contracts previously entered into by the debtor. The contracts can be terminated as part of the proceeding, in the case of bankruptcy proceedings under the oversight of the administrator and in the case of liquidation proceedings the liquidator terminates the contracts as the legal representative of the debtor. The liquidator has the right to terminate the contracts with immediate effect or to cancel the contracts.

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

The assets of the debtor cannot be subjected to enforcement, a creditor who is a pledgee cannot sell the pledge, while the debts are settled in the course of the liquidation proceedings.

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

Lawsuits brought previously are concluded by the court seized previously. If the debtor was unsuccessful in the lawsuit, the successful party takes part as a creditor in the liquidation proceeding. If the debtor was successful in the lawsuit, any asset or funds due to them are included in the assets of the insolvent estate. The Bankruptcy Act prescribes in several places that providing information to creditors is the administrator's or liquidator's task.

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

Creditors may form creditors' committees or elect a representative of the creditors with whom the liquidator must consult and whom the liquidator is obliged to inform and whose implicit or explicit consent must be obtained for certain measures.

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

The liquidator may sell the debtor's assets to the buyer making the best offer in a public sales procedure on an audited web-based sales portal.

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?

Both debts incurred previously and those arising after the opening of insolvency proceedings may be asserted by the creditor by notifying their claim in the bankruptcy proceeding or the liquidation proceeding as a creditor.

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

The insolvency practitioner (the administrator in bankruptcy proceedings or the liquidator in liquidation proceedings) registers the creditors' claims and submits contested claims before the court conducting the bankruptcy proceeding or liquidation proceeding for judgment.

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

The liquidator uses the proceeds from the sale of a pledge – after certain expenditures have been deducted – to pay the pledgee. The remaining amount is distributed among the creditors according to the distribution of assets, taking into account the ranking for the satisfaction of creditors determined in the Bankruptcy Act, and based on the interim liquidation balance sheet or closing liquidation balance sheet.

Following the sale of other assets the proceeds may be distributed after the interim liquidation balance sheet or the closing liquidation balance sheet was accepted, taking into account the distribution of assets approved by the court and the ranking for the satisfaction of creditors determined in the Bankruptcy Act.

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

The debtor may agree on a voluntary arrangement with creditors in either a bankruptcy proceeding or a liquidation proceeding. If the arrangement is in compliance with legislation, the court approves it and declares the proceeding to have been closed. In such cases the debtor continues their operations. The creditors' claims are satisfied in the manner and to the extent determined in the arrangement, the debtor is exempt from paying any amount beyond this.

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

In a bankruptcy proceeding closed by a voluntary arrangement approved by the court, the creditors' claims are satisfied in the manner and according to the schedule determined in the arrangement. If the debtor does not respect the arrangement, the creditors may lodge an enforcement proceeding or may initiate the liquidation of the debtor.

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

The creditors pay a registration fee. Lodging an insolvency proceeding (bankruptcy proceeding, liquidation proceeding) is subject to a fee. Otherwise any costs incurred are borne by the debtor.

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

The liquidator or the creditors may challenge such transactions by lodging a petition and may request the transaction to be declared invalid. Any assets thus returned to the debtor increase the assets of the insolvent estate.

The liquidator or the creditors may lodge lawsuits against the debtor's former directors for their activities which were detrimental to the interests of the creditors on the grounds that the former directors did not carry out their managerial functions taking into account the creditors' interests when a situation with the threat of insolvency arose, leading to a decrease in the economic operator's assets, or frustrated the full satisfaction of the creditors' claims or neglected to settle environmental charges. If this is proven, the former director of the debtor must compensate the creditors for the damage thus caused.

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Insolvency/bankruptcy - Malta

1 Who may insolvency proceedings be brought against?

Insolvency Proceedings (Companies) and Bankruptcy Proceedings (Partnerships and traders)

Under National law one may identify two forms of persons to which insolvency proceedings may apply, these being commercial partnerships, and traders. Different regimes are applicable to these types of persons. Commercial partnerships may be subdivided into partnerships *en nom collectif*, partnerships *en commandite* and the limited liability company.

Insolvency proceedings may be brought against all the aforementioned persons (natural and legal) however different procedures, rules and legislation will apply. In fact bankruptcy proceedings (Chapter 13 of the Laws of Malta) may be instituted against partnerships *en nom collectif*, partnerships *en commandite,* and against traders. Partnerships *en nom collectif*, partnerships *en commandite* are for all intents and purposes considered as traders for the sake of bankruptcy proceedings. The term "trader" is defined under Chapter 13 as any person who, by profession, exercises acts of trade in his own name, and includes any commercial partnership.

Reorganization Proceedings (Company Recovery)

Reorganisation procedures may be brought against companies in terms of Articles 327 to 329B of Chapter 386 - The Companies Act 1995.

2 What are the conditions for opening insolvency proceedings?

Insolvency Proceedings (Companies)

The company following a decision of the general meeting, its board of directors, any debenture holder, creditor or creditors, or any contributory or contributories may file proceedings in Court for the company to be dissolved and consequently wound up if the company is unable to pay its debts. The test to be applied in terms of Article 214(2)(a)(ii) of Chapter 386 is as follows:

The company shall be deemed to be unable to pay its debts -

(a) if 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 in article 273 of the Code of Organization and Civil Procedure; 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.

The court will grant the parties the opportunity to make their case and eventually decide whether the requisites for insolvency exist, in which case the court will order dissolution and the deemed date of insolvency will be the date of filing of the application to the court in terms of article 223 of Chapter 386.

In the period between the order for dissolution in the case of insolvency and the filing of the application for insolvency to court, the court may at any time appoint a provisional administrator, and charge him with the administration of the estate or business of the company as the court may specify in the order appointing him. The provisional administrator holds office until such time as the winding up order is made or the winding up application is dismissed unless before such time he resigns or he is removed by the court upon good cause being shown.

Insolvency - Voluntary Creditors winding up

Apart from the above a company may dissolve voluntarily and if the directors are of the opinion that the assets of the company are not sufficient to cover the liabilities, a meeting of creditor will be called for appointing an insolvency practitioner (and/or a liquidation committee) who enjoys and the trust of the creditors who will be charged with the winding up of the company without the need of court proceedings. The rules to be followed are laid down under Articles 277 *et seq* of Chapter 386.

Reorganization Proceedings (Company Recovery)

The company following an extraordinary resolution, the directors following a decision of the board of directors, or the creditors of the company representing more than half in value of the company's creditors, may file reorganization proceedings (Recovery procedures in terms of Article 329B of Chapter 386) in Court if the company is unable to pay its debts, or is imminently likely to become unable to pay its debts. As in the previous case, a company shall be deemed to be unable to pay its debts -

(a) if 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 in article 273 of the Code of Organization and Civil Procedure; 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.

The Court will decide whether to put the company into reorganization, thus issuing a company recovery order within twenty working days from the application to court to administer the business of the company for a period to be specified by the Court (currently a period of one year which me be extended by a subsequent period of 1 year, however in virtue of amendments which are in the pipeline, this period shall be reduced to a period of four months which may be extended by further periods of four months up to a maximum period of twelve months.

Bankruptcy Proceedings (Partnerships and traders)

Bankruptcy proceedings may be filed by any creditor, whether the debt owing to him is a commercial debt or otherwise, and even though such debt has not yet fallen due, to proceed summarily before the Civil Court, First Hall, against the debtor or his lawful representative, demanding a declaration that such debtor is in a state of bankruptcy.

The criterion to be declared as bankrupt is the suspension of payment of debts by the debtor. The court will deliver its judgment declaring the bankruptcy, and appoint one or more curators to exercise the functions assigned to them in terms of the Commercial Code, Chapter 13.

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?

Insolvency Proceedings (Companies)(including creditors voluntary winding up)

All the assets of the company will be liquidated to cover the liabilities of the debtor. There will be no distinction between assets which already formed part of the estate of the debtor, and those which devolve on the debtor after the opening of the insolvency proceedings.

Bankruptcy Proceedings (Partnerships and traders)

In bankruptcy proceedings which relate to traders and partnerships *en nom collectif* and *en commandite*, all assets whether movable and immovable can form part of the estate to be liquidated. In the case of bankruptcy, once a declaration of bankruptcy has been delivered, the bankrupt is ipso jure dispossessed of the administration of all his property whether such property relates to his business or otherwise, save for his right to a daily maintenance in order to subsist.

His assets shall be held in the possession of a curator who in turn shall have the right to sell and alienate the property with the Court's approval. The property of the bankrupt which is perishable shall be sold by means of a licensed auctioneer after obtaining Court authority.

In the case of non-perishable merchandise and other property this also requires Court authority.

The Judge in such circumstances shall give such directions that he considers most advantageous in the interest of the bankrupt and the creditors, even if the circumstances so arise, to allow the curator to re-establish the bankrupt's affairs or increase his assets, as long as this is to the benefit of the creditors to.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Insolvency Proceedings (Companies)

As soon as the court orders the dissolution of a company on grounds that it is insolvent, it will appoint an insolvency practitioner (insolvency practitioner). Chapter 386 imposes an obligation that such insolvency practitioner needs to be a natural person, who is qualified as an advocate or a certified public accountant and/or auditor, or is registered with the Registrar of Companies as fit and proper to exercise the function of insolvency practitioner.

A further restriction is that an insolvency practitioner may not act as insolvency practitioner of a particular company if he has held the office of director or company secretary or has held any other appointment with or in connection with that particular company, at any time during the four years prior to the date of dissolution of the company.

The court has wide discretion in determining who shall pay for the remuneration of the insolvency practitioner. By default the insolvency practitioner shall be remunerated out of the assets of the company. However if these are insufficient the Court may order that payment is effected by other (connected) persons and on such basis as the Court may direct.

In terms of Article 296 of Chapter 386 the powers of the company officers (directors and company secretary) shall cease on the appointment of an insolvency practitioner, and therefore neither the directors, including any delegate, nor the company secretary shall have the authority to transact in the name and on behalf of the said company in liquidation. The insolvency practitioner will take into his custody or under his control all the property and all rights to which he has reasonable cause to believe the company to be entitled.

In terms of Article 238 of Chapter 386, the insolvency practitioner in a winding up by the court shall have the power, with the sanction either of the court or of the liquidation committee:

(a) to bring or to defend any action or other legal proceeding in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up thereof;

(c) to pay creditors according to their ranking at law;

(d) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or which may be due in damages against the company or whereby the company may be rendered liable, and to refer any such matter to arbitration;
(e) to make calls on contributories or alleged contributories and to effect any compromise or arrangement in relation to debts, liabilities and claims of the company present or future, certain or contingent, ascertained or which may be due in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or alleged debtor, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof;
(f) to represent the company in all matters and to do all such things as may be necessary for winding up the affairs of the company and distributing its assets.
In addition the Court may provide that the insolvency practitioner may, where there is no liquidation committee, exercise any of the powers mentioned in paragraphs (a) or (b) above without the sanction of the Court.
In general, the insolvency practitioner in a winding up by the court shall, have the power -
(a) to sell the movable and immovable property, including any right, of the company by public auction or private agreement with power to transfer the whole or any part thereof;
(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents;
(c) to raise on the security of the assets of the company any money requisite;
(d) to appoint a mandatory to act for him in his capacity as insolvency practitioner for particular purposes.
The exercise by the insolvency practitioner in a winding up by the court of the powers conferred by this article shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.
In the interim period between the order for dissolution in the case of insolvency and the filing of the application for insolvency to court, where the court appoints a provisional administrator, the powers of the company officials shall also cease to the extent that the court will charge the administrator with the administration of the estate or business of the company as the court may specify in the order appointing him.

Reorganization Proceedings (Company Recovery)

In terms of article 329B(6)(a) of Chapter 386, during the period that a recovery (reorganization) order is in force, the company shall continue to carry on its normal activities under the management of the special controller.
The special controller needs to be an individual who the Court has ascertained to its satisfaction that he/she enjoys proven competence and experience in the management of business enterprises, is qualified and willing to accept the appointment, and has no conflict of interest in relation to his appointment.
The remuneration of the special controller is covered by the company. In fact in its appointment the court determines a period, not exceeding ten working days from the making of the company recovery order, within which the company shall deposit a sum of money in Court or offer other suitable guarantee or other appropriate arrangement, which, in the opinion of the Court, is sufficient to cover the remuneration, and charges of the special controller connected to his appointment.
On the appointment of the special controller, any power conferred on the company in terms of any law or by its Memorandum & Articles of Association shall be suspended unless the consent of the special controller to exercise such power has been obtained, which consent may be given either generally or in relation to a particular case or cases. In the absence, any such power shall vest in the special controller.
In general, the special controller will have the authority to:
(a) take into his custody or under his control all the property of the company and he shall thenceforth be responsible to manage and supervise its activities, business and property.
(b) after informing the Court, to remove any director of the company and to appoint any individual to serve as a manager;
(c) engage persons for the provision of professional or administrative services, and commit the company to the payment of their respective fees or charges; and
(d) to call any meeting of the members or creditors of the company.
In addition, the special controller shall have the power, with the prior express authorisation of the Court, to:
(i) engage the company into any commitment of more than six months duration;
(ii) terminate the employment of company employees as he considers necessary for insuring the continuation of the company as a viable going concern in whole or in part;

Bankruptcy Proceedings (Partnerships and traders)

As explained above, with regard to traders carrying out their business in their personal name and partnerships, it is the Commercial Code under the Title of Bankruptcy, which in the applicable law.
With regard to the powers of the insolvency practitioner under bankruptcy, such insolvency practitioner is termed a ‘curator’ , and a ‘curator’ is a person or persons who the Court deems fit to faithfully discharge the duties of this office, even if such ‘curator’ may be a relation of the bankrupt or may be a creditor of the bankrupt.
The curator upon assuming his duties of this office shall take possession of all the bankrupts’ property and rights of any kind belonging to the bankrupt. Furthermore, the bankrupt shall take all the necessary steps to preserve the rights of the bankrupt against his debtors and also register in the Public Registry any hypothec affecting the property of the debtors of the bankrupt. The curator is responsible for his actions towards the bankrupt.
The curator also has the duty to sue for the payment of debts which are due to the bankrupt, but it shall not be lawful for the curators to make any compromise or refer any dispute to arbitration without the consent in writing of the majority in value of the creditors of the bankrupt, and the authority of the Judge.
Within one month from the delivery of the judgment of bankruptcy, the curator shall make up an inventory of the bankrupt’s property.
Every creditor has a right to see such a list and the creditor and the bankrupt are bound to assist in the making up of the inventory.
This inventory shall contain a true list together with a description and valuation of all bankrupt’s property.
The curator cannot dispose of property without the Court’s consent and the whole procedure is open to public scrutiny. The proceeds of any sale made by the curator on behalf of the bankrupt or partnership shall be listed and all receipts and invoices are to be properly documented.
It shall be in the power of the Court to demand of the curators, the bankrupt and the creditors to give on oath all information as it may deem necessary.
With regard to the powers of the debtor (in this case I understand the bankrupt person or bankrupt partnership), the debtor has the right to oversee that the curator is conducting the affairs of the bankruptcy in accordance to law and correctly.
The debtor has the right to whistle-blow to the Court if such actions taken by the curator are not conducted in accordance to the terms of the Court decree or if his affairs are being mismanaged.

The books and papers of the bankrupt shall be open to inspection at all times, so this signifies also that the debtor has a right to know, check and verify the actions of the curator appointed by the Court.
The debtor also has a right at law to a regular maintenance for his subsistence, meaning that the Court will allow the debtor an allocation of funds out of his own property, to be given to him by the curator which will be a subsistence allowance for his living and for his family, so long as there is no presumption that the bankrupt has acted fraudulently.

5 Under which conditions may set-offs be invoked?

Insolvency and Reorganization Proceedings (Companies) / Bankruptcy Proceedings (Partnerships and traders)

In terms of Chapter 459 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 insolvency practitioner, 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.
The above shall not apply in respect of any close-out netting agreement entered into at a time at which the other party knew or ought to have known that an application for the dissolution and winding up of the company by reason of insolvency was pending, or that the company has taken formal steps under any applicable law to bring about its dissolution and winding up by reason of insolvency.
It shall also not apply where the insolvent party is an individual (not a trader) or a commercial partnership other than a company (partnership *en nom collectif* or partnership *en commandite)* and the other party knew or ought to have known of events of the same nature as stated in the preceding paragraph in relation to the insolvent party.
Any authority or mandate in a contract to implement any close-out netting provision shall not be revoked by the declaration of bankruptcy or the insolvency of any other party to the contract.
It is further provided that notwithstanding the provisions of any other national law, nothing shall limit or delay the application of any provision of any contract providing for or relating to set-off or netting which would otherwise be enforceable and no order of any court nor any warrant or injunction or similar order issued by a court or otherwise and no proceedings of whatever nature shall have any effect in relation thereto. However notwithstanding what is being said in this paragraph, nothing shall prevent the application of any law which would render netting or set-off unenforceable in any particular case on the grounds of fraud or on any similar ground, or permit the enforceability of netting or set-off if any provision of a contract between the parties concerned would make netting or set-off void because of fraud or any similar ground.
The law specifies that it would be lawful for the parties to a contract:
to agree on any system or mechanism which would enable the parties to convert a non-financial obligation into a monetary obligation of equivalent value and to value such obligation for the purposes of any set-off or netting;
to agree on the rate of exchange or the method to be used to establish the rate of exchange to be applied in effecting any set-off or netting when the sums to be set off or netted are in different currencies, and to establish the currency in which payment of the net sum is to be effected;
to agree that any transactions or other dealings carried out pursuant to any contract, whether identified specifically or by reference to a type or class of transactions or dealings, shall be treated as a single transaction or dealing for the purpose of the set-off or netting provisions in the contract and that all such transactions or dealings shall be treated as a single transaction or dealing by the parties or any insolvency practitioner, receiver, curator, controller or special controller or other officer acting for the parties and any court.

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

Insolvency Proceedings (Companies)

Article 303 of Chapter 386 makes provision for privileges, hypothecs or other charges, transfer or other disposal of property or rights, and any payment, execution 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** to be deemed as fraudulent preference against its creditors whether such transaction is of a gratuitous nature or an onerous nature if it constitutes a transaction at an **undervalue** or if a **preference is given**. In such cases the transaction (fraudulent preference) shall be void.
Undervalue is defined as follows:
(a) a company enters into a transaction at an undervalue if:
(i) the company makes a gift or otherwise enters into a transaction on terms that provide for the company to receive no consideration, or
(ii) the company enters into a transaction for a consideration the value of which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the company;
Preference is defined as follows:
(b) a company gives a preference to a person if:
(i) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
(ii) the company does anything or suffers anything to be done which, in either case, has the effect of putting that person into a position which, in the event of the company going into insolvent winding up, will be better than the position he would have been had that act or omission not occurred.
An exception to the above is made if the person, in whose favour the transaction is made, done or incurred, 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.
Apart from the above, there is no other provision which has any direct effect on contracts.

Reorganization Proceedings (Company Recovery)

No ad-hoc enactments deal with the effect of reorganization proceedings on contracts.

Bankruptcy Proceedings (Partnerships and traders)

Under the Commercial Code and more precisely under Article 485, every act transferring property or any obligation entered into, or any renunciation to a succession made by the bankrupt under a gratuitous or onerous title, which has the purpose of defrauding his creditors, can be annulled.
Unlike the Companies Act, the Commercial Code does not specify a time limit such as in article 303 of Chapter 386 of the Laws of Malta.
In such above cases, if it is proven that the bankrupt knew of the existence of circumstances giving rise to a declaration of bankruptcy, than in such case, such actions can be annulled.

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

Insolvency Proceedings (Companies)

As soon as an insolvency proceeding is opened (the company is dissolved by court order on grounds of insolvency) no action or proceeding shall be **commenced (prohibition to commence actions)** against the company or its property except by the leave of the court and subject to such terms as the court may impose. The law does not specify in which cases the court would allow a court proceeding by a creditor to commence of continue, but in general the principle is that during an insolvency proceeding the assets of the company are administered in an orderly fashion for the benefit of all the creditors and that particular creditors should not be able to obtain an advantage by bringing proceedings against the company.

Reorganization Proceedings (Company Recovery)

National law provides for a stay of proceedings during reorganization (company recovery) proceedings. In fact article 329B(4) of Chapter 386 states that upon the submission of an application for reorganization (company recovery), and unless it is dismissed, or during the period during which the company recovery procedure is in force:

(a) any pending or new winding up application shall be stayed;

(b) no resolution for the dissolution and consequential winding up of the company may be passed or given effect to;

(c) the execution of claims of a monetary nature against the company and any interest that may otherwise accrue thereon shall be stayed;

(d) during the tenure of the lease, no landlord or other person to whom rent is payable may exercise any right of termination of lease in relation to premises leased to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with leave of the Court and subject to such terms as the Court may deem fit to impose;

(e) no other steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire-purchase agreement, except with the leave of the Court and subject to such terms as the Court may deem fit to impose;

(f) no precautionary or executive act or warrant mentioned in the Code of Organization and Civil Procedure, Chapter 16, shall be made against the company or any property of the company except with leave of the Court and subject to such terms as the Court may deem
fit to impose; and

(g) no judicial proceedings shall be commenced or continued against the company or its property except with leave of the Court and subject to such terms as the Court thinks fit to impose.

Bankruptcy Proceedings (Partnerships and traders)

In bankruptcy proceedings against a trader or partnership, once a curator has been appointed by the Court, then in such case, all actions against the person and property of the bankrupt can only be brought against the curator/s and not against the bankrupt or the bankrupt partnership, and this in accordance to article 500 of Chapter 13.

The creditor has a right to know, scrutinize and verify how the curator is administering the affairs of the bankrupt, and request recourse to the Court if his rights are being prejudiced by the curator/s.

In recovery proceedings, the Court has the discretion to issue a temporary decree in order to provide respite for the recovery of the affairs of the bankrupt /partnership.

Nonetheless, unlike in company recovery, actions may still be brought by creditors against the curator representing the bankrupt trader or bankrupt partnership.

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

Insolvency Proceedings (Companies)

As soon as an insolvency proceeding is opened (the company is dissolved by court order on grounds of insolvency) no action or proceeding shall be **proceeded with (stay)** against the company or its property except by the leave of the court and subject to such terms as the court may impose. The law does not specify in which cases the court would allow a court proceeding by a creditor to commence of continue, but in general the principle is that during an insolvency proceeding the assets of the company are administered in an orderly fashion for the benefit of all the creditors and that particular creditors should not be able to obtain an advantage by bringing proceedings against the company.

Reorganization Proceedings (Company Recovery)

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(c) the execution of claims of a monetary nature against the company and any interest that may otherwise accrue thereon shall be stayed;

(d) during the tenure of the lease, no landlord or other person to whom rent is payable may exercise any right of termination of lease in relation to premises leased to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with leave of the Court and subject to such terms as the Court may deem fit to impose;

(e) no other steps may be taken to enforce any security over the property of the company, or to repossess goods in the possession of the company under any hire-purchase agreement, except with the leave of the Court and subject to such terms as the Court may deem fit to impose;

(f) no precautionary or executive act or warrant mentioned in the Code of Organization and Civil Procedure, Chapter 16, shall be made against the company or any property of the company except with leave of the Court and subject to such terms as the Court may deem
fit to impose; and

(g) no judicial proceedings shall be commenced or continued against the company or its property except with leave of the Court and subject to such terms as the Court thinks fit to impose.

Bankruptcy Proceedings (Partnerships and traders)

National law under the Commercial Code does not provide for any stay of proceedings. Nonetheless, it would be possible at the request of the curator to request that such application brought before the Courts, is heard by the same Judge who is conducting the bankruptcy, so that the Judge may regulate and conduct the affairs of the bankruptcy safeguarding the rights and obligations of the bankrupt and ascertaining that the rights in accordance with the application submitted by the creditor are heard and decided upon.

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

Insolvency Proceedings (Companies)

Creditors may intervene in insolvency proceeding if they prove they have a judicial interest and as such would be able to make submissions during the proceedings before the court.

Creditors are informed of the ongoing process by the insolvency practitioner, who also holds meetings and creditors are allowed to give their opinion.

Reorganization Proceedings (Company Recovery)

Article 329B of Chapter 329B specifically states that both the court and the special controller shall act *inter alia* in the best interest of the creditors.

The special controller is also bound to call creditors' meeting/s, with the first one taking place by not later than one month from his appointment.
During such meeting/s the special controller is required to appoint a joint creditors and members committee to render such advice and assistance as the special controller may require in the management of the affairs, business and property of the company and its recovery as a viable going concern.

Bankruptcy Proceedings (Partnerships and traders)

Creditors may intervene in bankruptcy proceedings and participate if they prove they have a judicial interest and would be able to make submissions during proceedings before the court.
Creditors are informed of the ongoing process by the curator who also holds meetings and creditors are allowed to give their opinion
Creditors also have the right to give their vote and a final agreement as to scheme of arrangement as proposed, requires the consent of three-fourths in value of the creditors who have proven their claim.

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

Insolvency Proceedings (Companies)

The insolvency practitioner will be able to sell the property by obtaining the most advantageous offer for the assets of the company.

Reorganization Proceedings (Company Recovery)

The special controller will not be able to dispose of the property of the company without specific authorization by the court, or as suggested in the recovery plan which is subsequently approved, with or without amendments by the court. In any case the court will direct or approve the method of disposal of the assets of the company

Bankruptcy Proceedings (Partnerships and traders)

In bankruptcy proceedings,, the curator shall dispose of the property by obtaining the most advantageous offer for the assets of the company, and this by obtaining Court authorization to do so.
In the recovery of a partnership or bankrupt, article 498 of Chapter 13, the curator shall adhere to the recovery plan, however there is wide discretion on the Judge to give such directions as he considers most advantageous in the interest of the bankrupt and of the creditors
It is possible nonetheless for a creditor to oppose such authority of the Judge, if the creditor on just cause being shown, demonstrates that this is no in the interest of the creditors.

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?

Insolvency Proceedings (Companies)

No difference is made between claims arising after the opening of insolvency proceedings, or those which existed before. In insolvency proceeding however the court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the dissolution and winding up in such order of priority as the court thinks fit, and the court shall have regard to the following general order of priority:
(a) expenses properly chargeable or incurred by the official receiver or the insolvency practitioner in preserving, realising or collecting any of the assets of the company;
(b) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of the company;
(c) the remuneration of the provisional administrator, if any;
(d) the costs of the applicant, and of any person appearing on the application whose costs are allowed by the court;
(e) the remuneration of the special manager, if any;
(f) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of account;
(g) any allowance made by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
(h) any necessary disbursements by the insolvency practitioner in the course of his administration, including any expenses incurred by members of the liquidation committee or their representatives and allowed by the insolvency practitioner;
(i) the remuneration of any person employed by the insolvency practitioner to perform any services for the company, as required or authorised by the provisions of Chapter 386
(j) the remuneration of the official receiver and of the insolvency practitioner.

Reorganization Proceedings (Company Recovery)

N/A

Bankruptcy Proceedings (Partnerships and traders)

No difference is made between claims arising after the opening of bankruptcy proceedings, or those which existed before. In bankruptcy proceedings the court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the dissolution and winding up in such order of priority as the court thinks fit, and the court shall have regard to the following general order of priority
(a) expenses properly chargeable or incurred by the curator in preserving, realising or collecting any of the assets of the company;
(b) any other expenses incurred or disbursements made by the curator or under his authority, including those incurred or made in carrying on the business of the company;
(c) the remuneration of the curator, if any;
(d) the costs of the applicant, and of any person appearing on the application whose costs are allowed by the court;
(e) the remuneration of the special manager and of the registrar, if any;
(f) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of account;
(g) any allowance made by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
(h) any necessary disbursements by the curator in the course of his administration, including any expenses incurred by members of the committee if any, or their representatives, and allowed by the curator;
Once these are paid, then secured creditors are paid in accordance to the date of registration of their claim and after such secured creditors, all other creditors are paid as to when they were registered. If for the latter claims (the unsecured creditors) there are insufficient funds, these rank *pari passu*.

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

Insolvency Proceedings (Companies)

Claims shall be accepted at the discretion of the insolvency practitioner. There are no specific rules governing the manner in which claims are made. It is pertinent to point out that whenever the Official Receiver is appointed as insolvency practitioner, the following form for claims is used:

OFFICIAL RECEIVER
c/o MFSA
Notabile Road
Attard, BKR3000

Details of Dissolved Company		
1	Name and registration number	
2	Effective date of dissolution	
Details of Creditor		
3	Name and surname/ registration number	
4	Address	
5	E-mail address	
6	Phone/mobile phone number	/
Details of Debt		
7	Total amount of claim, including any uncapitalised interest due as at the date of dissolution	
8	Total amount of uncapitalised interest as at the date of dissolution	
9	Describe origin of debt including any relevant dates	
		(Attach additional pages if necessary)
10	Details of documents and/or other evidence in support of claim (attach certified true copy and number each document successively)	
		(Attach additional pages if necessary)
Details of Security (if any)		
11	Describe the type of security given/obtained	
		(Attach additional pages if necessary)
12	Date/s when security was given/obtained	
13	Amount of debt secured	
Declaration by Creditor		
14	I, the undersigned, hereby declare that the information given in this form is to the best of my knowledge, true, correct and complete:	
	Signature of Creditor / Name and Surname in Blocks / Identity Card Number	
15	If signing in representation of a legal person, complete below: In the name and on behalf of _____ Reg. No. _____ in my capacity as _____.	

As to the time frame within which such claims may be made Article 255 of Chapter 386 gives authority to the court to fix a time or times within which creditors are to prove their debts or claims or are to be excluded from the benefit of any distribution made before those debts are proved.

Reorganization Proceedings (Company Recovery)

No ad-hoc enactments deal with the effect of reorganization proceedings with regards to the lodging, verification and admission of claims.

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

Insolvency Proceedings (Companies)

It should be noted that with respect to insolvency under Maltese legislation there is no definite list of ranking of creditors, since ranking is not found in a specific legislation but is found in various legislation. The legislation which deals with ranking of claims can be found hereunder:

Article 302 of Chapter 386 states that 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 priority and ranking of their debts shall be regulated by the law for the time being in force.

Article 535 of Chapter 13 also states that creditors having pledges, privileges or hypothecs shall be ranked according to the law for the time being in force.

Both under Article 535 of Chapter 13 and Article 302 of Chapter 386, it is stated that ranking of debt shall be regulated by the law for the time being in force.

Under Maltese law, the *pari passu* principle is indirectly found in article 1996 of the Civil Code, Chapter 16, which states that the lawful causes of preference are privileges, hypothecs and the benefit of the separation of estates. It is also states that it shall be lawful for a creditor to subordinate, postpone, waive or otherwise modify his existing or future rights of payment, enforcement, ranking and other similar existing or future rights in favour of another person. Such subordination, postponement, waiver, modification or similar action may be made by agreement with or by unilateral declaration to any person, including another creditor, whether determined or yet to be determined at the time of the entry of such agreement or the making of such declaration.

Therefore differences in ranking are created by agreement. Consequently, if there are no privileges, hypothecs, or the benefit of the separation of estates, the debtors will rank equally.

In terms of the above, one would have to look at the various specific laws which grant priorities to certain claims, as is the case with the Value Added Tax Act, Chapter 406, the Employment and Industrial Relations Act, Chapter 452 and the Social Security Act, Chapter 318.

Article 62 of the VAT Act states that:

“The Commissioner shall have a special privilege over the assets forming part of the economic activity of a person in respect of any tax due by that person under this Act and the said tax shall, notwithstanding anything contained in any other law, be paid in preference to a debt having any other privilege, excepting a debt having a general privilege and a debt mentioned in article 2009(a) or (b) of the Civil Code.”.

Article 20 of the Employment and Industrial Relations Act states that:

“Notwithstanding the provisions of any other law any claim by any employee in respect of a maximum of three months of the current wage payable by the employer to the employee, and compensation for leave to which the employee is entitled, together with any compensation due to the employee in consideration of the termination of employment, or any notice thereof, shall constitute a privileged claim over the assets of the employer and shall be paid in preference to all other claims whether privileged or hypothecary:

Provided that, in every case, the maximum amount of the privileged claim shall not exceed the equivalent of the national minimum wage payable at the time of the claim over a period of six months.”.
Article 116(3) of the Social Security Act states that:
“Notwithstanding the provisions of any other law, the claim of the Director of any amount due by way of any Class One or Class Two contribution under this article shall constitute a privileged claim in the case of a Class One contribution, ranking equally with wages of employees over the assets of the employer, and, in the case of a Class Two contribution, over the estate of the self- employed or self-occupied person concerned and shall be paid in preference to all other claims (excluding wages) whether privileged or hypothecary.”.
Furthermore, Articles 2088 to 2095 of the Civil Code deal specifically with the order of priority of privileges. It is stated, amongst other things, that debts are to be paid according to the order of registration. Those hypothecs that are registered on the same day would then result in an equal rank.
However, in insolvency proceedings the court may (and in most cases will), in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the dissolution and winding up in such order of priority as the court thinks fit, and the court shall have regard to the following general order of priority:
(a) expenses properly chargeable or incurred by the official receiver or the insolvency practitioner in preserving, realising or collecting any of the assets of the company;
(b) any other expenses incurred or disbursements made by the official receiver or under his authority, including those incurred or made in carrying on the business of the company;
(c) the remuneration of the provisional administrator, if any;
(d) the costs of the applicant, and of any person appearing on the application whose costs are allowed by the court;
(e) the remuneration of the special manager, if any;
(f) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of account;
(g) any allowance made by order of the court, towards costs on an application for release from the obligation to submit a statement of affairs, or for an extension of time for submitting such a statement;
(h) any necessary disbursements by the insolvency practitioner in the course of his administration, including any expenses incurred by members of the liquidation committee or their representatives and allowed by the insolvency practitioner;
(i) the remuneration of any person employed by the insolvency practitioner to perform any services for the company, as required or authorised by the provisions of Chapter 386
(j) the remuneration of the official receiver and of the insolvency practitioner.
During insolvency proceedings the insolvency practitioner will prepare a report containing a ranking of creditors and a scheme of distribution, which will be presented in court. The creditors are allowed to make submissions if they are in disagreement with the contents of such report and the court may order rectification. The court will eventually approve the said ranking and scheme and order the insolvency practitioner to proceed with payment to creditors.

Reorganization Proceedings (Company Recovery)

N/A

Bankruptcy Proceedings (Partnerships and traders)

First and foremost the distribution governing the distribution of proceeds are primarily governed by article 531 of the Commercial Code and by laws under the Civil Code which enlists the ranking of creditors between those creditors who have a privilege at law and those creditors who have a secured hypothec. These are secured creditors which emanate either from dispositions of the law or from public deed in accordance to the date of when such registration was enrolled, and which are also regulated by article 535 of the Commercial Code.
Thereafter, simple creditors (which are not registered creditors) are ranked *pari passu* in accordance to their claims.
Once a person is declared bankrupt, a meeting is held within ten days from such declaration whereby an examination of the claims are analyzed before the Judge, the Registrar, the curator, the bankrupt and the creditors and inventory is drawn up.
In this meeting, the bankrupt is heard and the bankrupt proposes the terms of the composition. At this sitting, what is discussed is whether the case before it merits a composition whereby a composition of creditors (the ones who are not registered creditors by way of a privilege or hypothec or by way of a pledge) is appointed to appear instead of all the creditors, and the creditors even individually have the right to contest such within 8 days.
A second meeting would be held whereby in the second meeting the Judge once again presides such meeting, whereby for the composition of creditors to be admitted, it must represent three-fourths of the sums admitted to be due by the bankrupt;
After this procedure, and once the inventory is established of all creditors, another meeting is held whereby at this meeting the Judge shall preside such meeting after due notice of the meeting would have been publicized in accordance to law.
At this meeting, every creditor shall present his case, and if the curator opposes any creditor, than the creditor has to prove his case, to the curator and to the composition of creditors.

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

Insolvency Proceedings (Companies)

During insolvency proceedings as soon as the insolvency practitioner has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the insolvency, and has distributed a final payment, if any, to the creditors, and has adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, and submitted accounts at the company’s expense, on being satisfied that the insolvency practitioner has complied with the requirements of Chapter 386 and such other requirements, if any, as may be laid down by it and, after taking into consideration the report and any objection which may be raised by any creditor or contributory or person interested, the court will proceed to release the insolvency practitioner from his appointment.
Subsequently the court makes an order that the name of the company be struck off the register from the date of the order. Such order shall be notified to the Registrar of Companies who shall effect the striking off.

Reorganization Proceedings (Company Recovery)

Article 329B(12) provides for different scenarios which involve the termination of the recovery procedure as follows:
(a) If, at any time during which a company recovery procedure is in force, it results to the special controller, after consulting the joint creditors’ and members’ committee, that it would serve no useful purpose for the company to continue with the said procedure, the special controller shall forthwith make an application to the Court for the termination of the company recovery procedure, containing his detailed and comprehensive reasons there for, and the Court shall order that the company be wound up by the Court.
The procedure contemplated in Chapter 386 relating to insolvency proceedings will apply.
(b) If, at any time during which a company recovery procedure is in force, it results to the special controller, after consulting the joint creditors’ and members’ committee, that the affairs of the company have improved to the extent that it is in a position to pay its debts, he shall submit an application to the Court,

containing his detailed and comprehensive reasons to that effect, and request the Court to issue an order for the termination of the company recovery procedure. In the event that the Court accedes the application, it shall make such provisions and conditions, as it may consider necessary in the circumstances of the case.
In this case the company will continue to operate as a viable going concern. The stay on proceedings will cease as soon as the court accedes to the aforementioned application.
(c) If, at any time during which a company recovery procedure is in force, the directors of the company or the members at an extraordinary general meeting become satisfied that the affairs of the company have improved to the extent that it is in a position to pay its debts, they may submit an application to the Court, accompanied by appropriate supporting documentation and information, confirming that they are so satisfied, and requesting the Court to issue an order for the termination of the company recovery procedure, and the Court shall not proceed to make an order acceding to or declining the application without having first heard the special controller. In the event that the Court accedes the application, it shall make such provisions and conditions, as it may consider necessary in the circumstances of the case.
As in the previous case, the company will continue to operate as a viable going concern. The stay on proceedings will cease as soon as the court accedes to the aforementioned application.
(d) At the end of the period of his appointment, the special controller shall submit a written final report to the Court containing his detailed and comprehensive opinions and reasons as to whether or not the company has a reasonable prospect of continuing as a viable going concern in whole or in part and will be in a position to pay its debts regularly in the future.
Where the final report submitted by the special controller expresses the opinion that the company has a reasonable prospect of continuing as a viable going concern, in whole or in part, it shall additionally have attached to it a precise and detailed recovery plan which shall contain all the proposals required to enable the company to continue as a viable going concern, with such explanations as may be required to give effect to such recovery, including proposals in relation to financial resources, the retention of employees and the future management of the company. The said recovery plan shall also explain the proposed manner of paying creditors the whole or a proportion of their claims, whether a voluntary compromise has been reached with all the creditors, or whether it is proposed that the Court sanction a compromise which has not been approved by all the creditors.
Following receipt of the final report and the recovery plan, the Court may request any explanations and clarifications as it may consider appropriate which shall be provided either verbally or in writing as the Court may direct. Subsequently the Court may either reject the proposed recovery plan, or it may accept and approve it in whole or in part and may require amendments thereto. Where the Court approves the recovery plan submitted by the special controller, whether with or without amendments as the Court may direct, the recovery plan shall be effective and binding on all interested parties for all purposes of law. The stay on proceedings will cease as soon as the court approves the recovery plan.
(e) If the Court issues an order for the termination of the company recovery procedure on the grounds that the company has no reasonable prospect of continuing as a viable going concern and will not be in a position to pay its debts regularly in the future, it shall order that the company be wound up by the Court.
The procedure contemplated in Chapter 386 relating to insolvency proceedings will apply.

Bankruptcy Proceedings (Partnerships and traders)

During bankruptcy proceedings as soon as the curator has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the bankruptcy, and has distributed a final payment, if any, to the creditors, and has adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, and submitted accounts at the company's expense, on being satisfied that the curator has complied with the requirements under Chapter 13 and such other requirements, if any, as may be laid down by it and, after taking into consideration the report and any objection which may be raised by any creditor or contributory or person interested, the court will proceed to release the curator from his appointment.
Subsequently the court makes an order that the name of the partnership be struck off the register from the date of the order. Such order shall be notified to the Registrar of Companies who shall effect the striking off.
Of course the above applies for partnerships.
With regard to traders, once the trader is declared bankrupt and the proceeds distributed, then in such case the bankrupt by way an application to the Registrar may request to appear before a Judge whereby on such day the Court shall also call upon the creditors and the curator involved in his bankruptcy, to establish whether the trader can be rehabilitated to trade once again.
If such trader did not act fraudulently or maliciously, he may be rehabilitated to trade. This rehabilitation has the effect of discharging the bankrupt, with respect both to his person and to his after acquired property from all debts that could at any time previous to the declaration of bankruptcy have been claimed against him.

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

Insolvency Proceedings (Companies)

In terms of Article 315(1) of Chapter 386, a creditor may be able to seek redress of his rights against any party who is deemed to have carried out the business of the company with intent to defraud the creditors of the company, or creditors of any other person, or for any fraudulent purpose. In such cases following an application to the court, it may declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.

Reorganization Proceedings (Company Recovery)

No ad-hoc enactments deal with creditors' rights after the closure of insolvency proceedings.

Bankruptcy Proceedings (Partnerships and traders)

Once the bankruptcy is terminated whether it be a partnership or trader, the creditors' rights are none, unless the creditor can prove that the trader or partnership acted maliciously or fraudulently towards the creditors.

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

Insolvency Proceedings (Companies)

The costs are incurred either by the person filing the application for insolvency or by the company, as the court directs.

Reorganization Proceedings (Company Recovery)

In reorganization (company recovery) proceedings, the company will bear the costs of the proceedings.

Bankruptcy Proceedings (Partnerships and traders)

The costs and expenses are borne by the person lodging the application or by the bankrupt person

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

Insolvency Proceedings (Companies)

Article 303 of Chapter 386 makes provision for privileges, hypothecs or other charges, transfer or other disposal of property or rights, and any payment, execution 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** to be deemed as fraudulent preference against its creditors whether such transaction is of a gratuitous nature or an onerous nature if it constitutes a transaction at an **undervalue** or if a **preference is given**. In such cases the transaction (fraudulent preference) shall be void.
Undervalue is defined as follows:
(a) a company enters into a transaction at an undervalue if:
(i) the company makes a gift or otherwise enters into a transaction on terms that provide for the company to receive no consideration, or
(ii) the company enters into a transaction for a consideration the value of which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the company;
Preference is defined as follows:
(b) a company gives a preference to a person if:
(i) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
(ii) the company does anything or suffers anything to be done which, in either case, has the effect of putting that person into a position which, in the event of the company going into insolvent winding up, will be better than the position he would have been had that act or omission not occurred.
An exception to the above is made if the person in whose favour the transaction is made, done or incurred, 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.

Reorganization Proceedings (Company Recovery)

No ad-hoc enactments provide for the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors in Reorganization Proceedings (Company Recovery).

Bankruptcy Proceedings (Partnerships and traders)

No ad-hoc enactments provide for the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors in Bankruptcy or Recovery proceedings

Last update: 16/10/2017

Insolvency/bankruptcy - Austria

1 Who may insolvency proceedings be brought against?

Austrian insolvency law is not confined to entrepreneurs. Capacity for insolvency is in fact defined as part of legal capacity under private law: any person who can hold rights and obligations also has capacity for insolvency. On the other hand, it is not a matter of capacity to transact. This means that any natural person (even a child) can be an insolvency debtor, as can legal persons (private or public), registered partnerships pursuant to the Commercial Code (Unternehmensgesetzbuch) (general partnerships (offene Gesellschaften), limited partnerships (Kommanditgesellschaften)) and estates of deceased persons. On the other hand, silent partnerships (stille Gesellschaften) and companies constituted under civil law (Gesellschaften bürgerlichen Rechts) do not have capacity for insolvency.
After the dissolution of a legal person or registered partnership, the opening of insolvency proceedings is permitted as long as the assets have not been distributed (§ 68 of the Insolvency Code (Insolvenzordnung - IO)).
Bankruptcy proceedings (Konkursverfahren), but not reorganisation proceedings (Sanierungsverfahren), can be brought against the assets of credit institutions, securities firms, investment services firms and insurance undertakings (§ 82(1) of the Banking Act (Bankwesengesetz – BWG), § 79 of the 2018 Securities Supervision Act (Wertpapieraufsichtsgesetz - WAG 2018), and § 309(3) of the 2016 Insurance Supervision Act (Versicherungsaufsichtsgesetz - VAG 2016)).

2 What are the conditions for opening insolvency proceedings?

Since the 2010 Insolvency Law Amendment Act (Insolvenzrechtsänderungsgesetz 2010) took effect, there has been only one type of **standard insolvency proceedings** under Austrian law. However, at the same time, different designations are given depending on the actual course of the proceedings:
Insolvency proceedings are known as **bankruptcy proceedings (Konkursverfahren)** if no restructuring plan is yet available when the proceedings are opened. In principle, both liquidation and restructuring are possible under bankruptcy proceedings.
Insolvency proceeding are termed **reorganisation proceedings (Sanierungsverfahren)** if a restructuring plan already exists when the proceedings are opened. The proceedings focus on the reorganisation of the debtor. They are available to natural persons who run a business, legal persons, partnerships and estates of deceased persons (§ 166 IO).
Reorganisation proceedings are possible **with or without debtor in possession (Eigenverwaltung)**. A debtor remains in possession (under the supervision of a reorganisation administrator (Sanierungsverwalter)) if they offer a dividend of at least 30% to the insolvency creditors in the restructuring plan, and further documents are also available. For instance, a financial plan is necessary, showing that financing is ensured for 90 days.
Debt settlement proceedings (Schuldenregulierungsverfahren), which are available to natural persons who do not run a business, are a further variant of insolvency proceedings.
A **request** for opening insolvency proceedings must be made either by the debtor or by a creditor. In the case of reorganisation proceedings, a request must in any case be made by the debtor and a restructuring plan must exist.
A prerequisite for opening insolvency proceedings is that in principle the debtor is **insolvent** (§ 66 IO). Insolvency proceedings may also be opened in the form of reorganisation proceedings in the event of **imminent insolvency** (§ 167(2) IO). Opening insolvency proceedings with respect to registered partnerships in which no partner with unlimited liability is a natural person or with respect to the assets of legal persons and the estates of deceased persons also occurs in the case of **over-indebtedness** (§ 67 IO).
A further condition for opening insolvency proceedings is the availability of **assets to cover the costs**. At least the initial costs of insolvency proceedings must be covered (exception: debt settlement proceedings in certain cases).
The opening of insolvency proceedings is published in an edict on the Internet (www.edikte.gv.at). The opening of insolvency proceedings produces legal effects at the start of the day following publication of the edict. The opening of insolvency proceedings is also recorded in public registers (Land Register (Grundbuch), Commercial Register (Firmenbuch), etc.).

If the insolvency proceedings cannot be opened immediately, the insolvency court (Insolvenzgericht) must order **interim measures** to secure the estate and in particular to prevent voidable legal acts and ensure the continuation of a business, on condition that the request to open the proceedings is not clearly unfounded (§ 73 IO). The court may prohibit the debtor from carrying out certain legal acts (e.g. sale or encumbrance of property) or make such acts subject to court approval. The appointment of a temporary administrator is also possible.

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 opening of insolvency proceedings has the effect of withdrawing from the debtor the right of free disposal over all the assets subject to enforcement that belong to the debtor at this time or which the debtor acquires during the insolvency proceedings (§ 2(2) IO). They accrue to the insolvency estate (Insolvenzmasse).

The insolvency estate thus includes all movable and immovable property belonging to the debtor, such as shares in immovable property, co-ownership shares, claims, property rights, and inheritances. The insolvency estate does not include claims by the debtor for maintenance in kind, personal labour, or the non-attachable part of the payments (the minimum required for subsistence). Likewise the estate does not include unattachable movables (e.g. things for personal use) and strictly personal rights (e.g. industrial property rights).

If the debtor lives in a house belonging to the insolvency estate (or an owner-occupied flat), they and their family initially are not evicted from essential residential premises (§ 5(3) IO). However, this does not prevent realisation of the house (owner-occupied flat) in the insolvency proceedings. The insolvency court also leaves tenancy rights (or other rights of use) concerning residential premises which are indispensable for the debtor and their family at the free disposal of the debtor (§ 5(4) IO). Leaving such rights at the free disposal of the debtor gives rise to their segregation from the insolvency estate.

The creditors' committee (Gläubigerausschuss) may also decide, with the approval of the insolvency court, to segregate claims which are unlikely to adequately succeed or items of minor value from the insolvency estate (§ 119(5) IO). The reason for such segregation is that it avoids the expense of realising each item belonging to the estate which would not bring any benefit for the estate.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Bankruptcy procedure

The debtor

is entitled to apply for bankruptcy and to appeal against the opening of bankruptcy proceedings;

loses power of disposal in relation to the assets belonging to the estate when bankruptcy proceedings are opened;

is entitled to attend the creditors' meeting (Gläubigerversammlung) and the creditors' committee;

is entitled to make an application for conclusion of a restructuring plan.

The trustee in bankruptcy

is responsible for the practical conduct of the insolvency proceedings;

reviews the financial position of the debtor;

continues to run the business if it is not yet closed on opening the proceedings and no disadvantage from continuation arises for the creditors;

examines the claims lodged;

examines whether a restructuring plan is in the interests of the creditors and whether it is likely to be executable;

establishes and disposes of the assets;

administers and represents the insolvency estate;

exercises the right of challenge for the insolvency estate;

distributes the proceeds from the estate.

Where bankruptcy proceedings concern natural persons who do not run a business (debt settlement proceedings), the appointment of a trustee in bankruptcy is the exception. If the insolvency court does not appoint a trustee in bankruptcy, it must itself deal with the matters entrusted to the trustee in bankruptcy under the Insolvency Code.

Restructuring procedure without debtor in possession

The debtor

applies for the opening of the reorganisation proceedings and the conclusion of a restructuring plan;

loses power of disposal in relation to the assets belonging to the estate when insolvency proceedings are opened;

is entitled to attend meetings of creditors and of the creditors' committee.

The trustee in bankruptcy

is responsible for the practical conduct of the insolvency proceedings;

reviews the financial position of the debtor;

continues to run the business if it is not yet closed on opening the proceedings and no disadvantage from continuation arises for the creditors;

examines the claims lodged;

examines whether a restructuring plan is in the interests of the creditors and whether it is likely to be executable;

administers and represents the insolvency estate;

exercises the right of challenge for the insolvency estate.

Restructuring procedure with debtor in possession

The debtor

applies for the opening of the reorganisation proceedings with debtor in possession and the conclusion of a restructuring plan and also presents the necessary documents for debtor in possession with the application;

retains a (limited) power of disposal and in principle continues to administer his or her assets himself or herself;

is under the supervision of the reorganisation administrator and the insolvency court.

The reorganisation administrator

supervises the debtor and the debtor's business management;

grants or refuses authorisation for legal acts which are not carried out in the normal course of business;

represents the debtor in all matters in which the debtor does not have power of disposal;

ascertains the financial position of the debtor;

examines whether the restructuring plan is executable and whether reasons exist for withdrawal of possession;

examines the claims lodged;

exercises the right of challenge for the insolvency estate.

The **insolvency court** has to supervise the activities of the insolvency administrator (Insolvenzverwalter). It can issue the insolvency administrator with written or oral instructions, obtain reports and explanations, inspect accounts and other documents and conduct the necessary inquiries. The court may also order the insolvency administrator to obtain instructions from the creditors' committee on individual matters. The insolvency administrator must notify the court of certain transactions prior to concluding them (§ 116 IO); other transactions require approval of the creditors' committee and the insolvency court (§ 117 IO).

Appointment and remuneration of the insolvency administrator:

The insolvency administrator is to be appointed by the insolvency court of its own motion on opening the insolvency proceedings. The administrator must be respectable, reliable and experienced in business and have knowledge of the insolvency system (§ 80(2) IO). In insolvency proceedings concerning businesses, sufficient knowledge of business law or business administration is necessary (§ 80(3) IO). Persons interested in insolvency administration can register on a list of insolvency administrators. The list is available on the Internet at https://www.justiz.gv.at/ and is used by the insolvency courts to facilitate the selection of a suitable insolvency administrator.

The insolvency administrator may not be a close relative (§ 32 IO), but also not a competitor of the debtor and must be independent of both the debtor and the creditors (§ 80b(1) IO).

Legal persons can also be appointed as insolvency administrators. They must inform the court of the name of the natural person representing them in carrying out the insolvency administration (§ 80(5) IO).

The insolvency administrator is entitled to reimbursement of their cash expenses and to remuneration for their efforts, plus value added tax (§ 82, first sentence, IO). The amount of the administrator's fee is regulated by law (§ 82 IO) and depends on the gross proceeds that the insolvency administrator has obtained from the realisation of the assets. However, this includes only the proceeds which the insolvency administrator was responsible for collecting. The minimum remuneration for the insolvency administrator is EUR 3 000. There is additional remuneration on adoption of a restructuring or payment plan (§ 82a IO) and for the realisation of a sub-estate (§ 82d IO). Separate remuneration is also paid for continuation of a business (§ 82(3) IO).

5 Under which conditions may set-offs be invoked?

The possibility of **set-off** against a claim of the debtor is in principle maintained during the insolvency proceedings.

However, it is a prerequisite that the **claims were eligible for set-off when the proceedings were opened**. Set-off is not permitted if an insolvency creditor has become a debtor of the insolvency estate only after the opening of insolvency proceedings or if the claim against the debtor has been acquired only after the opening of insolvency proceedings (§ 20(1), first sentence, IO). Furthermore, set-off is **precluded** if the third party acquired the counterclaim against the debtor in the last **six months prior to the opening of insolvency proceedings** and at the time of acquisition **knew or should have known of the insolvency** (§ 20 (1) and (2) IO). In such cases, even minor negligence is detrimental to the third party.

In the insolvency proceedings, set-off against a **conditional claim** is possible, irrespective of whether the conditional claim is held by the insolvency creditor or the debtor. If the insolvency creditor has a conditional claim, the insolvency court may make the set-off dependent on provision of security (§ 19 Abs. 2 IO).

Set-off in insolvency proceedings is also not precluded by the fact that the insolvency creditor's claim **is non-monetary** (§ 19(2) IO). This does not give rise to difficulties because such entitlements are converted into monetary claims when the insolvency proceedings are opened (§ 14(1) IO).

Insolvency creditors with claims eligible for set-off do not have to lodge them **in the insolvency proceedings**, provided that they are covered by the counterclaim (§ 19(1) IO). The Supreme Court (Oberster Gerichtshof – OGH) has ruled however that if an insolvency creditor does not avail themselves of the statutory possibility of set-off during the insolvency proceedings pursuant to § 19(1) IO, once the restructuring plan has been finally confirmed and the insolvency proceedings have been closed they will as a rule be able to set off their claim only at the rate of the restructuring plan dividend (RIS-Justiz RS0051601 [T4]).

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

Bilateral contracts

If a bilateral contract has not been performed or has not been performed in its entirety by the debtor and the other party at the time of the opening of insolvency proceedings, the insolvency administrator may either perform the contract (in its entirety) on behalf of the debtor and demand performance from the other party or else rescind the contract (§ 21(1) IO). In reorganisation proceedings with debtor in possession, the debtor is called upon to make a statement pursuant to § 21 IO. If the debtor wishes to rescind the contract, the approval of the reorganisation administrator is necessary (§ 171(1) IO). If the other party is under an obligation to perform the contract in advance, they may refuse to perform it until provision of a security, unless at the time of conclusion of the contract they were aware of the debtor's adverse financial circumstances (§ 21(3) IO).

Leases

In the event of insolvency proceedings in relation to the tenant, the insolvency administrator is entitled to terminate the lease subject to compliance with the statutory or agreed shorter period of notice (§ 23 IO).

Contracts of employment;

If the debtor is an employer and if the employment relationship has already been entered into, then it may in principle be terminated by the employee through early resignation, or by the insolvency administrator, subject to observance of the statutory term of notice, the collectively agreed term of notice or the admissibly agreed shorter term of notice, with consideration of the statutory restrictions relating to termination, within one month of publication of the decision ordering, approving or establishing the closure of the undertaking or a division of the undertaking. Special provisions apply for insolvency proceedings with debtor in possession.

Bar to termination of contracts

If termination of a contract could jeopardise the continuation of the debtor's business, the other party may terminate a contract entered into with the debtor, for a period of six months starting from the opening of the insolvency proceedings, only for good cause. Deterioration of the debtor's economic situation and the debtor's default in satisfying claims that became due prior to the opening of insolvency proceedings are not deemed to be good cause (§ 25a(1) IO). The restrictions do not apply if the termination of the contract is essential to avert severe personal or economic hardship to the contracting party, in the case of entitlement to disbursement of loans and in the case of employment contracts (§ 25a(2) IO).

Invalid agreements

According to § 25b(2) IO, a contractual provision rescinding or terminating a contract in the event of opening of insolvency proceedings is not permitted. This applies in principle for all contracts (a few exceptions concern contracts under the Banking Act or Stock Exchange Act (Börsegesetz)).

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

From the opening of the insolvency proceedings, insolvency creditors can no longer pursue their claims against the debtor by judicial process, either individually or outside the insolvency (**bar to proceedings**, § 6(1) IO). Injunctions in favour of insolvency claims also cannot be issued. Only in reorganisation proceedings with debtor in possession does the debtor remain entitled to engage in litigation and other proceedings where matters of possession are concerned (§ 173 IO). If contrary to § 6(1) IO an action is brought by the debtor or against the debtor after the opening of insolvency proceedings, it must be dismissed.

Furthermore, after the opening of insolvency proceedings, no lien or right of satisfaction may be acquired to enforce payment of an insolvency claim (**bar to enforcement**, § 10(1) IO). Regarding entitlement to segregation and to separate settlement already established before the opening of insolvency proceedings, there is no general bar to enforcement; enforcement may therefore be pursued in insolvency proceedings too.
The bars to proceedings and enforcement must be complied with **of the court's own motion**, and extend to all insolvency creditors.

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

Lawsuits pending in relation to the estate are **stayed** ex lege on the opening of insolvency proceedings (§ 7(1) IO). The stay of proceedings is exercised of the court's own motion.
Proceedings concerning insolvency claims may in any event not be resumed before the verification meeting (§ 7(3) IO). If the claim is **contested**, at the verification meeting by the insolvency administrator or by one of the creditors entitled to do so, the stayed proceedings can be continued **as a verification process** (§ 113 IO).
Proceedings concerning claims which are not subject to lodgement in the insolvency proceedings can be resumed **immediately**.
Enforcement proceedings commenced before the opening of insolvency proceedings **Exekutionsverfahren** are in principle not stayed. However, liens and rights of satisfaction acquired to enforce payment in the 60 days prior to the opening of insolvency proceedings lapse ex lege, unless they are in respect of claims under public law (§ 12(1) IO). In the case of lapsing, the **enforcement proceedings for realisation** are to be **stayed** at the request of the insolvency court or the insolvency administrator (§ 12(2) IO).

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

Creditors' meeting

The creditors' meeting is the general body of insolvency creditors and serves to enable the insolvency creditors to participate in the proceedings. The insolvency court is responsible for convening and chairing the creditors' meeting (§ 91(1) IO). The first creditors' meeting is convened on the opening of insolvency proceedings and is required by law. Further meetings are convened by the insolvency court at its discretion. A creditors' meeting is convened in particular if applied for by the insolvency administrator, the creditors' committee or at least two creditors whose claims represent about a quarter of the insolvency claims, specifying the items of the agenda.
The creditors' meeting has certain petition rights (e.g. for appointment of a creditors' committee or dismissal of the insolvency administrator). It is also responsible for voting on the adoption of a restructuring plan.
Decisions and applications by the creditors' meeting generally require an absolute majority of votes, to be calculated on the basis of the amount of the claims (§ 92(1) IO).

Creditors' committee

A creditors' committee is not necessarily always appointed in insolvency proceedings, but only where it seems advisable on account of the nature or particular scale of the business. If the sale or lease of the business or part of the business is pending (§ 117(1), number 1, IO), a creditors' committee must always be appointed. It serves to supervise and assist the insolvency administrator (§ 89(1) IO). The administrator must consult the creditors' committee in respect of important arrangements (§ 114(1) IO). For certain important transactions (e.g. sale of the business), the consent of the creditors' committee is a precondition for validity.
A creditors' committee consists of three to seven members. The appointment is made by the court of its own motion or on application. Not only creditors, but also other natural or legal persons may be appointed as members.

Creditor protection associations

In practice, the interests of the insolvency creditors are in many cases represented by **creditor protection associations (Gläubigerschutzverbände)**. These associations carry out the lodgement of claims, attend meetings and exercise the voting rights of the insolvency creditors they represent in the case of a restructuring plan. The creditor protection associations also monitor disbursements by the insolvency administrator.

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

The trustee in bankruptcy is in principle required to dispose of the items belonging to the insolvency estate out of court, in particular via **sale on the open market**. **Auction by the court** in accordance with the Enforcement Code (Exekutionsordnung) only takes place in exceptional instances, where this is decided by the insolvency court in response to an application by the trustee in bankruptcy.
With the approval of the insolvency court, the creditors' committee may decide that claims whose enforcement is unlikely to adequately succeed, and items of minor value, should be surrendered to the debtor for the debtor's free disposal.

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?

Insolvency claims

Insolvency claims (Insolvenzforderungen) are claims of creditors who have pecuniary claims against the debtor when the insolvency proceedings are opened (§ 51 IO). However, interest on insolvency claims since the opening of insolvency proceedings, the costs of participation in the insolvency proceedings, fines for criminal offences of any kind, as well as claims related to gifts, and, in the case of insolvency proceedings over a deceased person's estate, also claims arising out of legacies, are not insolvency claims (§ 58 IO).
The principle of equal treatment applies in principle to insolvency claims. Neither public authorities nor employees are given preference in the insolvency proceedings.
However, claims of a shareholder for repayment of a shareholder loan which replaces equity are subordinate claims.
If a creditor wishes for satisfaction from the insolvency estate, they must lodge their insolvency claim in the insolvency proceedings, even if a lawsuit is pending or a judgment has already been handed down in this respect.

Claims for debts incurred by the estate

Claims for debts incurred by the insolvency estate (Massenforderungen) are claims expressly listed in the Code which arise only after the opening of insolvency proceedings. Claims for debts incurred by the estate are to be satisfied out of the estate on a preferential basis, i.e. before satisfying the insolvency creditors (§ 47(1) IO). The most important such claims are (§ 46(1) IO):
the costs of the insolvency proceedings;
the disbursements associated with preservation, administration and management of the insolvency estate;
all public charges relating to the estate, if and in so far as the circumstances triggering the charge materialise after the insolvency proceedings are opened;
claims by employees for regular remuneration for periods after the insolvency proceedings are opened;
claims for fulfilment of bilateral contracts entered into by the insolvency administrator;
claims arising out of legal acts by the insolvency administrator;
claims arising out of enrichment of the insolvency estate without cause;
claims arising out of the termination of an employment relationship, if this was entered into during the insolvency proceedings.

Claims for debts incurred by the estate need not be lodged in the insolvency proceedings. If the insolvency administrator refuses to satisfy such a claim when it has fallen due, then the creditor in question may assert the claim through the courts.

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

Insolvency claims must be lodged in writing with the insolvency court. They must be lodged in the national currency (euros); any currency conversion will take place on the date of the opening of insolvency proceedings. When lodging a claim, it is necessary to state its amount and the facts on which it is based, as well as the evidence which can be provided to prove the alleged claim.

The creditor must also state whether there is any reservation of title for the claim and which assets fall under such a reservation, and whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened. The creditor must provide their email address and bank account details.

Claims should be lodged using the form provided on www.justiz.gv.at. If the creditor lodges a claim without using this form, the claim must still contain the information listed in the form.

This EU Insolvency Regulation applies to claims lodged by foreign creditors. A standard form is provided in the Implementing Regulation; if the creditor does not use that form the claim lodged must still contain the information listed in the Insolvency Regulation.

Insolvency claims must be lodged within the time limit for lodging claims which is indicated in the insolvency edict. If a creditor lodges a claim late, they may have to pay the associated costs of a special verification meeting. Claims lodged later than 14 days prior to the meeting for the verification of the final accounts will not be considered (§ 107(1), last sentence, IO).

If a lodged claim is recognised by the insolvency administrator and not contested by any other insolvency creditor, it is considered to be admitted. This means in particular that the insolvency creditor is considered in the distribution.

If a lodged claim is contested by the insolvency administrator or an insolvency creditor, the claim can be verified only in civil proceedings in court. Whether the claim is considered to be admitted in the insolvency proceedings then depends on the outcome of these civil proceedings.

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

The distribution of proceeds is regulated in §§ 128-138 IO.

Claims for debts incurred by the insolvency estate are to be satisfied by way of priority, followed by the insolvency claims.

The **creditors whose claims are for debts incurred by the estate** are to be satisfied as soon as their claims are fixed and due, without regard to the status of the proceedings. If the available funds are insufficient to cover claims for debts incurred by the estate in full, they must be satisfied according to the following ranking (§ 47 IO):

cash expenses advanced by the insolvency administrator;

the other costs of the proceedings;

the costs advanced by a third party in so far as was necessary to cover the costs of the proceedings;

claims of employees, in so far as they are not secured under the Insolvency Remuneration Guarantee Act (Insolvenz-Entgeltsicherungsgesetz);

claims of employees arising out of termination of an employment relationship, in so far as they are not secured under the Insolvency Remuneration Guarantee Act;

other claims for debts incurred by the estate.

The amount remaining after those claims have been satisfied in full is to be distributed as a dividend to the **insolvency creditors**. Satisfaction of the insolvency creditors may not commence until after the general verification meeting. The insolvency administrator must in principle effect distribution following consultation with the creditors' committee and on the basis of the approval of the distribution plan by the insolvency court.

Secured creditors take precedence over the insolvency creditors and the creditors with claims for debts incurred by the estate in so far as their claims are covered by the property serving as security (e.g. collateral). Any surplus from the proceeds of disposal is transferred to the common insolvency estate (§ 48 (1) and (2) IO).

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

Restructuring plan

A restructuring plan (Sanierungsplan) is an agreement concluded under the insolvency proceedings between the debtor and the insolvency creditors on the reduction and stay of payment of the insolvency claims and is used for debt settlement. It requires the approval of the majority of creditors and confirmation by the insolvency court. If, in the insolvency proceedings, the debtor's proposed restructuring plan is approved by the majority of creditors and the restructuring plan is confirmed by the insolvency court, the debtor is released from liabilities in excess of the restructuring plan dividend.

The debtor may in principle conclude a restructuring plan in any form of insolvency proceedings, i.e. not only in reorganisation, but also in bankruptcy proceedings (bankruptcy proceedings are not primarily directed towards realisation of assets and break-up; rather, in bankruptcy proceedings too, it should first be examined whether a restructuring plan is possible).

In a restructuring plan, the debtor must make an offer to the insolvency creditors to pay at least 20% of the insolvency claims within two years. In the case of natural persons who do not run a business, the payment period may amount to up to five years. The entitlements of segregation or separate settlement creditors must not be affected by the restructuring plan. Creditors with claims for debts incurred by the insolvency estate are to be satisfied in full, and insolvency creditors must in principle receive equal treatment.

Insolvency proceedings are termed reorganisation proceedings if a restructuring plan already exists when the proceedings are opened.

Debt settlement proceedings

A restructuring plan is available not only to businesses and legal persons, but also to natural persons who do not run a business. If no restructuring plan is arrived at during the debt settlement proceedings, the debtor's assets are realised. Further debt relief options are the payment plan (Zahlungsplan) and failing that the levy procedure (Abschöpfungsverfahren). A payment plan is a special form of restructuring plan. The main difference relates to the absence of a specific minimum dividend.

If the creditors do not approve a payment plan, then the court must rule on an application by the debtor for a levy procedure with a repayment plan, or with a levy plan for release from residual debts, that will result in release from residual debts. The repayment plan is subject to stricter conditions than the levy plan: these take the form of additional barriers to discharge. The approval of the creditors is not necessary in either case. The attachable proportion of income is levied first. The debtor must assign corresponding (salary) claims to a trustee of the creditors for a period of three years where there is a repayment plan, and for a period of five years where there is a levy plan. Upon expiry of the deed of assignment, the court must close a levy procedure that is still open and, at the same time, declare that the debtor is released from any remaining unpaid debts towards the insolvency creditors (release from residual debts, Restschuldbefreiung).

Collective judicial execution (Gesamtvollstreckung) is a subcategory of debt settlement proceedings, which is initiated at the request of a creditor. It must be closed as soon as the debtor requests the approval of a restructuring or payment plan or the initiation of a levy procedure.

Termination of insolvency

If a restructuring plan (or payment plan) is confirmed by the insolvency court, the insolvency proceedings are closed when the decision confirming the plan becomes final. Automatic closure of the insolvency proceedings also follows once a levy procedure has been finally instituted.
If there is no restructuring or payment plan, the insolvency proceedings are to be closed by the insolvency court once evidence of completion of the final distribution has been provided.
The insolvency proceedings must also be closed if all the creditors - insolvency creditors and creditors with claims for debts incurred by the estate - approve, or if it should be found during the course of the insolvency proceedings that the assets are insufficient to cover the costs of the insolvency proceedings.
Decisions on the closure of the insolvency proceedings are published in the insolvency proceedings database (Insolvenzdatei).
As a result of the final closure of the insolvency proceedings, the debtor again acquires full power of disposal with respect to their assets (except where a levy procedure has been instituted); the powers of the insolvency administrator end. Furthermore, the debtor once again acquires unrestricted capacity to sue and be sued. In pending lawsuits there is a statutory change of party, from the estate to the debtor. In certain sectors, the debtor may operate a business again only subject to administrative restrictions (e.g. under the trade regulations (Gewerbeordnung)) or professional restrictions (e.g. under the Order on Lawyers (Rechtsanwaltsordnung)). Criminal penalties are provided for especially in the case of intentional prejudice to creditors.

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

In so far as insolvency proceedings do not end with discharge from debt (as a result of a restructuring plan, payment plan or release from residual debt after a levy procedure), the insolvency creditors are **free to make an additional claim** after the final closure of the insolvency proceedings, i.e. they can now once again assert a residual claim not satisfied in the insolvency proceedings, by legal action or enforcement against the former insolvency debtor.
The variants of insolvency proceedings in which there is release from residual debts, on the other hand, have the effect that the residual claim exceeding the dividend is only an imperfect obligation (Naturalobligation), i.e. a debt without liability, which may be paid but cannot be enforced.

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

The costs of the insolvency proceedings are to be borne by the insolvency estate.
If there are insufficient assets to cover the costs, the insolvency proceedings are nevertheless to be opened if the creditor making the application pays an amount to cover the costs by way of an advance (exception § 183a IO). The claim of such a creditor to repayment takes precedence over the claims of other claims for debts incurred by the estate (§ 46, number 1, IO).

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

Legal acts by the debtor prior to the opening of insolvency proceedings

Certain legal acts which have been undertaken before the insolvency proceedings were opened and which are detrimental to creditors are voidable (§§ 27 et seq. IO). Both positive legal acts and omissions concerning the debtor's assets can be challenged. The prerequisite for a successful challenge is that the effect of the legal transaction to be challenged has been **detrimental** to the insolvency creditors. This is the case if the legal act caused a loss of satisfaction for the other creditors, for instance by reducing the assets or increasing the liabilities. A further condition for a successful challenge is that, as a result of the challenge, the **prospects for satisfaction** of the creditors **are improved**. In addition to these general conditions, the characteristics of one of the following situations for contesting a legal act must be met:

Voidability on account of intention to disadvantage creditors (§ 28, numbers 1-3, IO)

If the debtor has acted with the intention to disadvantage creditors and the third party was aware of this, the voidability covers a period of ten years before the opening of insolvency proceedings (§ 28, number 1, IO). If the lack of awareness of the intention to disadvantage creditors was merely negligent, the challenge is limited to a period of two years prior to the opening of insolvency proceedings.

Voidability on account of squandering of assets (§ 28, number 4, IO)

Purchase, exchange and supply contracts concluded in the last year before the opening of insolvency proceedings are voidable in so far as they caused squandering of assets detrimental to the creditors, and the other party was or should have been aware of this.

Voidability on account of disposals free of charge (§ 29 IO)

Disposals free of charge by the debtor undertaken in the two years before the opening of insolvency proceedings are voidable.

Voidability on account of preferential treatment (§ 30 IO)

This circumstance enables the voidability of certain legal acts through which one creditor is accorded preferential treatment above the others. A condition for voidability is the undertaking of the act within the last year before opening of insolvency proceedings. At the same time, it is a proviso that the insolvency or over-indebtedness has already arisen, or an application for the opening of insolvency proceedings has been brought, or the act occurred in the last 60 days before the opening of insolvency proceedings. If the creditor was not entitled to claim the satisfaction or security in accordance with the terms of the relevant legal relationship, or not in that form or not at that time (inkongruente Deckung), there are no further conditions relating to intention or knowledge. If the other party was indeed entitled to claim the satisfaction or security in that form or at that time (kongruente Deckung), the act may also be voidable under § 30 IO. In that event, voidability requires that the debtor intended the preferential treatment and that the other party was aware or should have been aware of the intention.

Voidability on account of knowledge of insolvency (§ 31 IO)

This circumstance covers certain legal acts which were undertaken in the six months prior to the opening of insolvency proceedings and after the occurrence of insolvency (over-indebtedness), in so far as the other party knew or at least should have known of the insolvency, the over-indebtedness or the request to open the proceedings. A further prerequisite is that the legal act gives the creditor security or satisfaction, or that the legal transaction is directly detrimental.
Only the insolvency administrator is entitled to challenge. Before this, the administrator must consult the creditors' committee (§ 114(1) IO). The challenge is to be made by court application (Klage), objection (Einrede, § 43(1) IO), opposition (Widerspruch) in the enforcement proceedings for realisation, or lodgement in proceedings for the insolvency of the opponent to the challenge. If the claim expires in some other fashion, the court application must be made within one year of the opening of insolvency proceedings, this time limit being extended if the insolvency practitioner and the defendant so agree; the extension may be agreed only once and may not exceed three months (Section 43(2) IO).

Legal acts by the debtor after the opening of insolvency proceedings

In so far as the debtor is not entitled to remain in possession, legal acts by the debtor undertaken after the opening of insolvency proceedings, and affecting the insolvency estate, are in principle no longer valid in relation to the insolvency creditors (§ 3(1) IO). This is a matter of **unenforceability**. The debtor can enter into contractual obligations even after the opening of insolvency proceedings, but claims deriving from such obligations cannot be asserted to the detriment of the insolvency creditors before the closure of the insolvency proceedings. However, the insolvency administrator can put such transactions into effect by approving them retrospectively.

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Insolvency/bankruptcy - Poland

1 Who may insolvency proceedings be brought against?

In Poland bankruptcy proceedings within the meaning of Article (1)(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on bankruptcy proceedings (recast) are governed by two acts:

the Act of 28 February 2003 - the Bankruptcy Law (*Prawo upadłościowe*, Journal of Laws (*Dziennik Ustaw*) 2016, No 2171) – hereinafter referred to as the ' Bankruptcy Act'.

the Act of 15 May 2015 - the Restructuring Law (*Prawo restrukturyzacyjne*, Journal of Laws 2016, No 1574) – hereinafter referred to as the 'Restructuring Act'.

The provisions of the Bankruptcy Act govern liquidation proceedings related to insolvency, i.e. 'bankruptcy' (*upadłość*). The Restructuring Act governs restructuring proceedings related to the risk of insolvency, i.e. 'composition approval proceedings' (*postępowanie o zatwierdzenie układu*, Articles 210-226), ' accelerated composition proceedings' (*przyspieszone postępowanie układowe*, Articles 227-264), 'composition proceedings' (*postępowanie układowe*, Articles 267-282) and 'remedial proceedings' (*postępowanie sanacyjne*, Articles 283-323).

The goal of **bankruptcy proceedings** is to satisfy creditors' claims in the greatest possible degree and, if reasonably possible, to keep the debtor's enterprise in existence. They are opened exclusively on request and consist of two stages: proceedings for the declaration of bankruptcy and proceedings after the declaration of bankruptcy.

Composition approval proceedings enable the debtor to enter into a composition by collecting the votes of the creditors on his own without the involvement of the court. Such proceedings may be opened if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition.

Accelerated composition proceedings enable the debtor to enter into a composition after a list of claims has been drawn up and approved in a simplified manner. Such proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition.

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Remedial proceedings enable the debtor to take remedial measures (intended to reorganise the debtor's enterprise) and to enter into a composition after a list of claims is drawn up and approved. Remedial measures include legal and practical measures intended to improve the debtor's economic situation and to restore his ability to meet his obligations, while protecting him against enforcement.

Bankruptcy proceedings may be brought against an entrepreneur. Pursuant to Article 431 of the Polish Civil Code (*kodeks cywilny*) an entrepreneur is a natural person, a legal person or an organisational unit without legal personality in which legal capacity is vested by statute, conducting business or professional activity on its own behalf.

A bankruptcy application may be filed by the debtor and by each of his personal creditors.

Bankruptcy proceedings may also be brought against:

limited-liability companies and joint-stock companies not conducting business activity;

partners in business partnerships who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;

partners in a professional partnership.

Bankruptcy proceedings may also be brought against natural persons not conducting business activity (Article 4911 et seq. of the Bankruptcy Act). Such proceedings are conducted only at the debtor's request, unless the debtor is a former entrepreneur, in which case a bankruptcy application may also be filed by a creditor up to one year after the entrepreneur's removal from the relevant register.

Restructuring proceedings may be opened in relation to:

entrepreneurs within the meaning of Article 431 of the Civil Code;

limited-liability companies (*spółka z ograniczoną odpowiedzialnością*) and joint-stock companies (*spółka akcyjna*) not conducting business activity;

partners in business partnerships (*osobowa spółka handlowa*) who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;

partners in a partnership (*spółka partnerska*).

Restructuring proceedings are not opened in relation to natural persons not conducting business activity. Restructuring proceedings are conducted only at the debtor's request, except for remedial proceedings, which may also be opened at a creditor's request if the debtor is insolvent.

Composition approval proceedings enable the debtor to enter into a composition by collecting the votes of the creditors on his own without the involvement of the court. Such proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims.

Accelerated composition proceedings enable the debtor to enter into a composition after a list of claims has been drawn up and approved in a simplified manner. Such proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition.

Composition proceedings enable the debtor to enter into a composition after a list of claims has been drawn up and approved. Such proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition.

Remedial proceedings enable the debtor to take remedial measures (intended to reorganise the debtor's enterprise) and to enter into a composition after list of claims has been drawn up and approved. Remedial measures include legal and practical measures intended to improve the debtor's economic situation and to restore his ability to meet his obligations, while protecting him against enforcement.

Bankruptcy proceedings may be brought against an entrepreneur. Pursuant to Article 431 of the Civil Code an entrepreneur is a natural person, a legal person or an organisational unit without legal personality in which legal capacity is vested by statute, conducting business or professional activity on its own behalf.

Additionally, bankruptcy proceedings may also be brought against:

limited-liability companies and joint-stock companies not conducting business activity;
partners in business partnerships who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;
partners in a partnership.
Proceedings for the declaration of bankruptcy may also be brought against natural persons not conducting business activity (Articles 4911 et seq. of the Bankruptcy Act.).
Restructuring proceedings may be opened in relation to:
entrepreneurs within the meaning of the Act of 23 April 1964 - the Civil Code (*kodeks cywilny*, Journal of Laws 2016, item 380 and 585), hereinafter referred to as the 'Civil Code';
limited-liability companies (*spółka z ograniczoną odpowiedzialnością*) and joint-stock companies (*spółka akcyjna*) not conducting business activity;
partners in business partnerships (*osobowa spółka handlowa*) who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;
partners in a partnership (*spółka partnerska*).
Restructuring proceedings are not opened in relation to natural persons not conducting business activity. Restructuring proceedings are conducted only at the debtor's request, except for remedial proceedings, which may also be opened at a creditor's request if the debtor is insolvent.

2 What are the conditions for opening insolvency proceedings?

Bankruptcy proceedings are opened against a debtor who has become insolvent (Article 10 of the Bankruptcy Act).
A debtor is insolvent if he is unable to meet his financial obligations when they fall due. A debtor is deemed to be unable to meet his financial obligations if they are more than three months overdue. A debtor that is a legal person or an organisational unit without legal personality in which legal capacity is vested under a separate legislative act is also insolvent when its financial obligations exceed the value of its assets and this state of affairs continues for more than 24 months. A court may reject a bankruptcy application if there is no short-term risk that the debtor will be unable to meet his financial obligations as they fall due.
Restructuring proceedings may be opened in respect of an insolvent debtor or a debtor at risk of insolvency. An insolvent debtor is a debtor that is insolvent within the meaning of Articles 10 and 11 of the Bankruptcy Act. A debtor at risk of insolvency is a debtor whose economic situation suggests that he may become insolvent in the short term.
The court refuses to open restructuring proceedings if they would be detrimental to creditors.
Furthermore, the Restructuring Act also lays down specific conditions for opening each type of restructuring proceedings.
Composition approval proceedings and accelerated composition proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on the composition.
Composition proceedings and remedial proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for more than 15% of all claims entitling creditors to vote on the composition. Moreover, the court refuses to open such proceedings if there is no *prima facie* evidence that the debtor will be able to cover the costs of proceedings and the liabilities arising after their opening on an ongoing basis.

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?

In bankruptcy proceedings the bankruptcy estate includes the assets owned by the bankrupt party on the day of the declaration of bankruptcy as well as the assets acquired by that party in the course of the *bankruptcy proceedings (Article 62 of the Bankruptcy Act). Exceptions to this rule are* specified in Articles 63-67a of the Bankruptcy Act.
The bankruptcy estate does not include assets excluded from enforcement pursuant to the Act of 17 November 1964 - Code of Civil Proceedings (Journal of Laws 2016, item 1822, 1823, 1860 and 1948), remuneration for the bankrupt party's work in the part not subject to attachment, the amount obtained through the enforcement of a pledge or a mortgage if the bankrupt was a pledge or mortgage administrator, in the part falling, under the administration agreement, to other creditors.
Furthermore, a resolution of the creditors' meeting may exclude the bankrupt party's other assets from the bankruptcy estate.
The bankruptcy estate also excludes assets intended to assist the bankrupt party's employees and their families, in the form of cash held in a separate account of a company social benefits fund set up pursuant to the provisions on the company social benefits fund, together with amounts to be paid into that account after the declaration of bankruptcy, including the repayment of housing loans, the payment of bank interest accrued in respect of the cash held by the fund and fees collected from persons using the social services and benefits financed by that fund and organised by the bankrupt party.
In restructuring proceedings the composition estate includes assets used for the operation of the enterprise and assets owned by the debtor (Articles 240, 273 and 294 of the Restructuring Act).

4 What powers do the debtor and the insolvency practitioner have, respectively?

In bankruptcy proceedings (proceedings aimed at liquidating the debtor's assets) the debtor is deprived of the right to manage his assets. The management of the assets (the bankruptcy estate) is taken over by the receiver (*syndyk*). The receiver also takes over other responsibilities related to the operation of the debtor's enterprise – running the company, meeting the reporting obligations etc.
The debtor remains a participant in the bankruptcy proceedings and can challenge some decisions issued by the court in the course of those proceedings, i. e. decisions concerning the exclusion of assets from the bankruptcy estate and the receiver's remuneration.
In restructuring proceedings the debtor's and the insolvency practitioner's powers differ according to the type of proceedings.
In composition approval proceedings the debtor may perform all actions, save during the period between the day on which the decision approving the composition is issued and the day on which that decision becomes final. During that period the rules applicable are the same as in accelerated composition proceedings, i.e. the debtor may perform routine management actions. Actions other than routine management require the consent of the composition supervisor.
In accelerated composition proceedings and composition proceedings the debtor may perform routine management actions; but actions other than routine management require the consent of the court supervisor, unless they require the consent of the creditors' committee.
In remedial proceedings the debtor is deprived of the right to manage and actions are performed by the insolvency practitioner, unless they require the consent of the creditors' committee.

5 Under which conditions may set-offs be invoked?

In bankruptcy proceedings the claims of the bankrupt party may be *set off* against the creditor's claims if both claims existed on the day of declaration of bankruptcy, even if one of them was not yet due (Article 93 of the Bankruptcy Act).

A set-off is not acceptable if the bankrupt party's creditor acquired the claim by assignment or endorsement after the declaration of bankruptcy or acquired it in the 12 months before the declaration of bankruptcy, knowing that there were grounds to declare bankruptcy, unless the acquisition was linked to the repayment of a debt for which the acquiring party was liable (regardless of whether that was personal liability or liability secured by a specific property). (Article 94 of the Bankruptcy Act)

A *set-off* is not acceptable if the creditor became the bankrupt party's debtor after the day on which bankruptcy was declared (Article 95 of the Bankruptcy Act).

The creditor who wishes to use the right of *set-off* submits a statement to that end no later than on the day when the claim is lodged (Article 96 of the Bankruptcy Act).

In restructuring proceedings the general rules for setting off mutual claims are subject to the following limitations:

a creditor became the debtor's debtor after the day on which the restructuring proceedings were opened;

after the opening of the restructuring proceedings the debtor of the debtor subject to restructuring proceedings became his creditor through the acquisition, by assignment or endorsement, of a claim that arose before the day on which restructuring proceedings were opened.

Mutual claims may be set off if the claim was acquired as a result of the repayment of a debt for which the acquiring party was liable (personal liability or liability secured on specific property) and if the acquiring party became liable for the debt before the day on which the application for accelerated composition proceedings was submitted.

A creditor who wishes to take advantage of a *set-off* in restructuring proceedings submits a statement to that end to the debtor or, if the debtor is deprived of the right of management, to the insolvency practitioner no more than 30 days after the opening of restructuring proceedings or, if the grounds for the *set-off* arose later, no more than 30 days after the grounds for the *set-off* arose. A statement is also valid if submitted to a court supervisor (Articles 253, 273 and 297 of the Restructuring Act).

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

Specific provisions regarding the effects of the declaration of bankruptcy on the bankrupt party's obligations are to be found in Articles 83-118 of the Bankruptcy Act, on inheritances acquired by the bankrupt party in Articles 119-123 and on the bankrupt party's matrimonial property regime in Articles 124-126.

Articles 81-82 of the Bankruptcy Act prohibit encumbering assets included in the bankruptcy estate with a pledge, registered pledge or mortgage.

The provisions of a contract to which the bankrupt individual is a party that prevent or hinder the achievement of the goal of bankruptcy proceedings are invalid in relation to the bankruptcy estate. A contract transferring the ownership of property, a claim or another right concluded in order to secure a claim is valid in relation to the bankruptcy estate if it was concluded in writing at a certified date, unless it is a contract establishing a financial security (Article 84 of the Bankruptcy Act).

Articles 85 and Article 85a lay down detailed rules on framework contracts concerning forward/future financial operations or the sale of securities under repurchase agreements.

The bankrupt party's financial obligations that are not yet due fall due on the day on which bankruptcy is declared. On the day on which bankruptcy is declared non-financial obligations become financial obligations and become payable on that day, even if the time limit for their performance has not yet lapsed (Article 91 of the Bankruptcy Act).

A claim arising from a contract concluded upon the acceptance of an offer submitted by the bankrupt party may be asserted by the creditor in bankruptcy proceedings only if the statement accepting the offer was submitted to the bankrupt party before declaration of bankruptcy.

If on the day of the declaration of bankruptcy obligations under a mutual performance contract have not been performed in full or in part, the receiver may, with the consent of the bankruptcy judge (*sędzia komisarz*), perform the bankrupt party's obligations and request the other party to perform the mutual obligation or withdraw from the contract with effect from the day of the declaration of bankruptcy. If on the day of the declaration of bankruptcy the bankrupt party is a party to any contract other than a mutual performance contract, the receiver may withdraw from that contract, unless otherwise provided for by statute.

At a request submitted by the other party at a certified date, the receiver declares within three months whether he withdraws from the contract or demands its performance. The receiver's failure to submit such a declaration in that time is deemed withdrawal from the contract.

The other party that is required to perform its obligation earlier may suspend the performance of its obligation until the mutual obligation has been performed or secured. The other party is not entitled to do that if at the time of concluding the agreement it knew or should have known of the grounds for declaring bankruptcy (Article 98 of the Bankruptcy Act).

If the receiver withdraws from the contract, the other party is entitled to the return of the performed obligation, even if it forms part of the bankruptcy estate. In bankruptcy proceedings a party may seek redress for the performed obligation and losses incurred by submitting those claims to the bankruptcy judge (Article 99 of the Bankruptcy Act).

A seller may demand the return of a movable asset - including securities - sent to the bankrupt party without receiving the price, if that asset was not acquired before the declaration of bankruptcy by the bankrupt party or by a person authorised by the bankrupt party to dispose of that asset. Also the consignee who sent the asset to the bankrupt party is entitled to its return. The seller or consignee to whom the asset has been returned refunds the costs that have been or are to be incurred and advance payments. However, the receiver may return the asset if he pays or secures the price payable by the bankrupt party and the costs. The receiver is entitled to do so within a month of requesting the return (Article 100 of the Bankruptcy Act).

Commission or consignment agreements concluded by the bankrupt party in which the bankrupt party was the commissioning party or consignor as well as securities management agreements concluded by the bankrupt party expire upon the declaration of bankruptcy. The other party may withdraw from commission or consignment agreements concluded by the bankrupt party in which the bankrupt party was the commissioned party or the consignee on the day when bankruptcy is declared (Article 102 of the Bankruptcy Act).

An agency contract expires as of the day when either party declares bankruptcy. In the event of the commissioning party's bankruptcy the agent may, in the bankruptcy proceedings, claim the loss it incurred because of the contract's expiry (Article 103 of the Bankruptcy Act).

If the lender or the borrower declares bankruptcy, the loan for use agreement, if its subject has already been lent, is terminated at either party's request. If the subject has not yet been lent, the agreement expires (Article 104 of the Bankruptcy Act).

If either party to a loan agreement declares bankruptcy, the loan agreement expires if the loan subject has not yet been lent (Article 105 of the Bankruptcy Act).

A real property rental or lease agreement binds the parties if the subject of the agreement has been made available to the tenant or lessee (Articles 106-108 of the Bankruptcy Act). Pursuant to a decision issued by the bankruptcy judge the receiver terminates the real property rental or lease agreement concluded by the bankrupt party at three months' notice, even if the termination of that agreement by the bankrupt party would not have been allowed (Articles 109-110 of the Bankruptcy Act).

A credit agreement expires upon the declaration of bankruptcy if the lender has not made the funds available to the bankrupt party before that date (Article 111 of the Bankruptcy Act).
The declaration of bankruptcy does not affect the bankrupt party's bank account agreement, securities account agreement or collective account agreement (Article 112 of the Bankruptcy Act).
In restructuring proceedings, from the day on which they are opened to the day of their closure or the day on which the decision to discontinue proceedings becomes final, the debtor or insolvency practitioner is not allowed to perform obligations arising from claims that are, by law, covered by a composition.
Contractual provisions stipulating the modification or termination of a legal relationship to which the debtor is a party if a request to open restructuring proceedings is filed or if such proceedings are opened are void.
The provisions of a contract to which the debtor is a party that prevent or hinder the achievement of the goal of restructuring proceedings are invalid in relation to the composition estate.
Article 250 of the Restructuring Act lays down detailed rules on framework contracts concerning forward/future financial operations or the sale of securities under repurchase agreements.
From the day of opening restructuring proceedings to the day of their closure or the day when the decision to discontinue proceedings becomes final the lessor is not allowed to terminate, without the consent of the creditors' committee, the rental or lease agreement for the premises or real property where the debtor's enterprise operates.
The rules described above for a rental or lease agreement apply *mutatis mutandis* to credit agreements in respect of funds made available to the borrower before the day of opening the proceedings, to lease, property insurance, bank account agreements, guarantee agreements, agreements covering licences granted to the debtor and guarantees or letters of credit issued before the day of opening the restructuring proceedings (Articles 256, 273 and 297 of the Restructuring Act).
Moreover, **in remedial proceedings** the insolvency practitioner may withdraw from a mutual performance contract that has not been performed in full or in part before the day when the remedial proceedings are opened, with the consent of the bankruptcy judge, if the other party's performance of that contract is indivisible. If the other party's performance of the contract is divisible, that provision applies *mutatis mutandis* to the extent to which the contract was to be performed by the other party after the opening of the remedial proceedings. If the insolvency practitioner withdraws from the contract the other party may claim the return of the performance rendered after the opening of the remedial proceedings and before that party received the withdrawal notice, if that performance forms part of the debtor's assets. If that is impossible, the other party may only seek redress for the performance and for the losses it incurred. Those claims are not subject to composition (Article 298 of the Restructuring Act).

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

After a **bankruptcy** application is filed, the court may, at the request of the debtor, temporary supervisor or the creditor who filed the bankruptcy application, suspend enforcement proceedings and repeal the attachment of the bank account if that is necessary to achieve the objectives of bankruptcy proceedings (Article 39 of the Bankruptcy Act).
After the declaration of bankruptcy *enforcement* proceedings in respect of the assets included in the bankruptcy estate, opened before the declaration of bankruptcy, are suspended by law as of the day on which bankruptcy is declared. The proceedings are terminated by law when the decision on the declaration of bankruptcy becomes final (Article 146 of the Bankruptcy Act).
After the declaration of bankruptcy, court, administrative and administrative court proceedings concerning the bankruptcy estate may be opened and conducted only by the receiver or against the receiver. A creditor may not open proceedings regarding a claim subject to lodging (Article 144 of the Bankruptcy Act).
In restructuring proceedings *enforcement* proceedings regarding a claim subject to composition by law, commenced before the opening of restructuring proceedings, are suspended by law as of the day of opening those proceedings. (Articles 259 and 278 of the Restructuring Act). In remedial proceedings the suspension applies to all enforcement proceedings in respect of the debtor's assets included in the remedial estate (Article 312 of the Restructuring Act).
On the day when the decision approving the composition becomes final, security and *enforcement* proceedings conducted against the debtor in order to meet the claims subject to composition are terminated by law. Suspended security and *enforcement* proceedings conducted against the debtor in order to meet claims not subject to composition may be resumed at the creditor's request (Article 170 of the Restructuring Act)
The opening of composition proceedings, accelerated composition proceedings or remedial proceedings does not prevent the creditor from opening court, administrative and administrative court proceedings or proceedings before courts of arbitration in order to assert claims subject to inclusion in the list of claims (Articles 257, 276 and 310 of the Restructuring Act).

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

After the declaration of bankruptcy the court suspends proceedings *ex officio* if they concern the bankruptcy estate, i.e. if their outcome may affect the bankruptcy estate (they concern an object included in the bankruptcy estate) and bankruptcy has been declared and if a compulsory administrator has been appointed in proceedings to declare bankruptcy (Article 174(1)(4) and (5) of the Code of Civil Procedure (*kodeks postępowania cywilnego*)). The court calls upon the receiver or compulsory administrator to take part in the proceedings (Article 174(3) of the Code of Civil Procedure). If the bankrupt party (debtor) is the claimant the court resumes *ex officio* the suspended proceedings as soon as the receiver (compulsory administrator) has been designated (Article 180(1)(5) of the Code of Civil Procedure).
Proceedings may be brought against the receiver only if, in bankruptcy proceedings, a claim is not included in the list of claims after the possibilities prescribed in the Code have been exhausted. (Article 145 of the Bankruptcy Act).
In restructuring proceedings ongoing court proceedings (pending at the moment of opening the proceedings) are suspended if the proceedings concern the composition estate (or remedial estate) and an insolvency practitioner has been appointed in restructuring proceedings or if a temporary administrator has been appointed in proceedings to open remedial proceedings and the proceedings concern assets covered by security (Article 174(1)(4) and (5) of the Code of Civil Procedure). The court calls upon the temporary administrator or insolvency practitioner to take part in the proceedings (Article 174(3) of the Code of Civil Procedure).
The admission of a claim, the waiver of a claim, composition or the admission of relevant facts of the case by the debtor in such cases without the consent of the court supervisor has no legal effect (Article 258 of the Restructuring Act).

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

The participation of the creditors in the bankruptcy proceedings is governed by Articles 189-213 of the Bankruptcy Act). Creditors whose claims have been admitted are entitled to take part in the creditors' meeting and vote.
The bankruptcy judge, acting *ex officio* or on request, establishes the creditors' committee and appoints and dismisses its members. The committee assists the receiver, controls his actions, examines the state of the funds forming the bankruptcy estate, grants permission for actions that may be performed only

with the permission from the creditors' committee and expresses its opinion on other matters if requested by the bankruptcy judge or receiver. The creditors' committee may request the bankrupt party or the receiver to provide clarification and it may examine books and documents concerning the bankruptcy in so far as that does not infringe business confidentiality.
The permission of the creditors' committee is necessary if the following actions by the receiver are to be valid:
the continued management of the enterprise by the receiver if it is to last more than three months after the declaration of bankruptcy;
waiving the sale of the enterprise as a whole;
the direct sale of the assets included in the bankruptcy estate;
contracting loans or credits and encumbering the bankrupt party's assets with limited proprietary rights;
the admission, waiver of entering into a composition regarding disputed claims and bringing a dispute before a court of arbitration.
An exception may be invoked when one of the above actions has to be performed immediately and concerns a value of no more than PLN 10 000 – then the receiver, court supervisor or insolvency practitioner may perform it without permission from the committee.
Moreover, no permission from the creditors' committee is required for the sale of movable assets if the estimated value of all movable assets included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000 and for the sale of claims and other rights, if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000.
In bankruptcy proceedings the creditor may submit a composition proposal.
Creditors may also challenge the decision of a bankruptcy court or a bankruptcy judge concerning the approval of the receiver's accounting reports, decisions concerning the list of claims, also in respect of other creditors' claims, the distribution plan, the receiver's remuneration and the decision to discontinue or terminate bankruptcy proceedings.
The participation of creditors **in restructuring proceedings** is governed by Articles 104-139 of the Restructuring Act. The creditors whose claims have been included in an approved list of claims as well as the creditors who appear at the creditors' meeting and submit to the bankruptcy judge a writ of execution confirming their claim are entitled to participate in the creditors' meeting and vote.
At the creditors' meeting a composition may be reached if at least a fifth of the creditors entitled to vote on a composition participate in the meeting.
The bankruptcy judge establishes the creditors' committee and appoints and dismisses its members *ex officio* or on request. The creditors' committee assists the court supervisor or insolvency practitioner, controls their actions, examines the state of the funds forming the composition or remedial estate, grants permissions for actions that may be performed only with the permission from the creditors' committee and expresses its opinion on other matters if requested by the bankruptcy judge, court supervisor, insolvency practitioner or debtor. The creditors' meeting and its members may submit their comments on the activity of the debtor, court supervisor or insolvency practitioner to the bankruptcy judge. The committee may request the debtor, court supervisor or insolvency practitioner to provide clarification and it may examine the debtor's books and documents in cases when that does not infringe business confidentiality. In other cases and in the event of doubts the bankruptcy judge specifies the scope of the prerogatives of the members of the creditors' committee as regards examining the books and documents of the debtor's enterprise.
To be valid, the following actions by the debtor or insolvency practitioner require the consent of the creditors' committee:
encumbering elements of the composition or remedial estate with a mortgage, pledge, registered pledge or maritime mortgage in order to secure a claim not subject to composition;
the transfer of the ownership of an object or a right in order to secure a claim not subject to composition;
encumbering elements of the composition or remedial estate with other rights;
contracting credits or loans;
concluding an agreement on the leasing of the debtor's enterprise or an organised part thereof or another similar agreement (performed with the consent of the creditors' committee, the above actions cannot be considered unenforceable in respect of the bankruptcy estate)
the sale, by the debtor, of real property or other assets worth over PLN 500 000.
Creditors may also challenge the decision of a restructuring court or a bankruptcy judge concerning the approval of accounting reports by the insolvency practitioner, decisions concerning the list of claims (composition and remedial proceedings) and other creditors' claims, the remuneration of the court supervisor or insolvency practitioner and the decision to discontinue or terminate bankruptcy proceedings.

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

In bankruptcy proceedings, after the declaration of bankruptcy the receiver draws up an inventory, estimates the bankruptcy estate and drafts a liquidation plan. The liquidation plan defines the proposed manner of selling the bankrupt party's assets, in particular the enterprise, the time of the sale, an estimate of expenditure and the economic rationale for the continuation of the business activity (Article 306 of the Bankruptcy Act). After drawing up the inventory and financial report or after submitting a general written report the receiver liquidates the bankruptcy estate (Article 308 of the Bankruptcy Act)
After the liquidation the receiver may continue to manage the bankrupt party's enterprise if a composition with the creditors is possible or if it is possible to sell the whole of the bankrupt party's enterprise or organised parts thereof (Article 312 of the Bankruptcy Act).
In restructuring proceedings, i.e. accelerated composition proceedings and composition proceedings the debtor normally continues to manage his enterprise.
Pursuant to Articles 239(1) and 295 of the Restructuring Act the debtor may be deprived of the right to manage if:
the debtor, intentionally or otherwise, infringes the law through management resulting in a detriment to the creditors or the possibility of such a detriment in the future;
it is obvious that the manner of management does not guarantee the implementation of the composition or a trustee (*kurator*) has been appointed for the debtor pursuant to Article 68(1);
the debtor does not comply with the instructions issued by the bankruptcy judge or court supervisor, in particular by failing to submit lawful composition proposals within the time limit set by the bankruptcy judge.
In remedial proceedings, if the effective conduct of such proceedings requires the personal participation of the debtor or of his representatives and at the same time they guarantee proper management, the court may permit the debtor to manage all or part of his enterprise within the scope of routine management (Article 288(3) of the Restructuring Act).
In **composition approval proceedings** the debtor manages his enterprise throughout the duration of the proceedings.

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?

In bankruptcy proceedings all claims of personal creditors are lodged. A claim may also be lodged by a creditor whose claim was secured with a mortgage, pledge, registered pledge, fiscal pledge, maritime mortgage or another entry in the land and mortgage register or shipping register (if it is not lodged by the creditor it will be included in the list *ex officio*). Claims under an employment relationship are included in the list *ex officio* (Articles 236(1) and (2) and 237 of the Bankruptcy Act).
The costs of bankruptcy proceedings are covered first, before the bankruptcy estate liabilities arising after the declaration of bankruptcy – (Articles 230(2) and 343(1) and (11) of the Bankruptcy Act), without drawing up a distribution plan.

In restructuring proceedings the list of claims covers the personal claims in respect of the debtor that arose before the opening of the restructuring proceedings (Article 76 of the Restructuring Act). The list of claims separately indicates claims subject to composition by law and claims subject to composition with the creditor's consent (Article 86 of the Restructuring Act).
In restructuring proceedings claims are not lodged. The list of claims is drawn up by the supervisor or insolvency practitioner based on the debtor's accounting books, his other documents, entries in the land and mortgage register and other registers.
The composition is binding for creditors whose claims are, pursuant to the Act, subject to composition, even if they are not included in the list of claims.
The composition is not binding for creditors who have not been disclosed by the debtor and have not participated in the proceedings (Article 166 of the Restructuring Act).
The composition cannot cover maintenance claims, benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement; claims for the transfer of property and for the cessation of the infringement of rights; claims for which the debtor is liable in connection with acquiring an inheritance after the opening of restructuring proceedings, after the inheritance's inclusion in the composition or remedial estate; claims in respect of the part of social insurance contributions financed by the insured where the debtor is the payer.
The composition also excludes claims under an employment relationship and claims secured on the debtor's property by means of a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage, in the part whose value is covered by the security, unless the creditor consents to including them in the composition (Article 151 of the Restructuring Act).

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

The rules governing the lodging, verification and admission of claims in bankruptcy proceedings are laid down in Article 239-266 of the Bankruptcy Act.
In bankruptcy proceedings the creditors are responsible for lodging claims. Claims must be lodged no more than 30 days after the decision on the declaration of bankruptcy is published in the Court and Commercial Gazette (*Monitor Sądowy i Gospodarczy*, then in the Central Register of Restructuring and Bankruptcy (*Centralny Rejestr Restrukturyzacji i Upadłości*), Article 51 of the Bankruptcy Act and Article 455 of the Restructuring Act).
Claims under an employment relationship do not have to be lodged. Claims of this type are included in the list of claims *ex officio* (Article 237 of the Bankruptcy Act).
The creditor lodges his claim in writing, in two copies. The lodgement should include the creditor's name and address, PESEL (personal identification) or KRS (National Court Register) number and in their absence details making it possible to identify the creditor clearly, define the claim together with the incidental dues and the value of the non-monetary claim, evidence confirming the existence of that claim (if the claim has been included in the list of claims drawn up in restructuring proceedings it is enough to invoke that fact), the category in which it may be included, securities linked to it and the status of the case if the claim is the subject of ongoing court, administrative, administrative court or arbitrary court proceedings. If a claim is lodged in respect of which the bankrupt party is not a personal debtor, the subject of the security has to be indicated that is to be used to meet the claim. If the creditor is a partner or shareholder in a bankrupt company, he indicates the number and type of shares he holds.
An appropriately submitted lodgement is transferred by the bankruptcy judge to the receiver, who verifies whether the lodged claims are confirmed by the bankrupt party's accounting books or other documents or by entries in the land and mortgage register or other registers and calls upon the bankrupt party to declare within a specified time limit whether it admits the claim. If the lodged claim is not confirmed by the bankrupt party's accounting books or other documents or by entries in the land and mortgage register or other registers, the receiver calls upon the creditor to submit, within a week, the documents named in the lodgement of the claim under pain of refusal to admit the claim. However, the receiver may take into account documents submitted after that deadline if that does not delay the submission of the list to the bankruptcy judge.
Within two weeks of the announcement that the list of claims has been added to the proceedings' file the creditor may raise an objection with the bankruptcy judge. Also the bankrupt party may object, if the draft list of claims is not in line with its requests or statements. If the bankrupt party has made no statements even though it was called upon to do so, it may only object if it proves that it has made no statement for reasons beyond its control.
The bankruptcy judge modifies the list of claims after the decision concerning the objection becomes final — and if that decision is challenged, after the court' s decision becomes final — and approves the list of claims. If no objection is made, he approves the list of claims after the deadline for objections has lapsed. The bankruptcy judge may modify the list of claims *ex officio*. If it is found that claims that are non-existent in full or in part have been included in the list of claims or that claims required to be included in the list *ex officio* have not been included in it, the bankruptcy judge may modify the list of claims *ex officio*.
A claim that is not required to be lodged which is lodged or disclosed after the deadline is included in the supplement to the list of claims. The list of claims is corrected in accordance with final judgments. A change in the amount of a claim that occurs after the list of claims is drawn up is taken into account when drafting the distribution plan or when voting at the creditors' meeting.
After the closure or discontinuation of bankruptcy proceedings an extract from the list of claims approved by the bankruptcy judge, indicating the claim and the amount received towards it by the creditor, serves as a writ of execution against the bankrupt party (this does not apply to creditors for whom the bankrupt party was not a personal debtor). The bankrupt party may request that a claim included in the list of claims be established not to exist or to exist in a smaller degree, if the bankrupt party has not admitted a claim lodged in bankruptcy proceedings and the court has not yet passed a final judgment regarding it. After the extract from the list is declared enforceable, the bankrupt party may raise the objection that the claim included in the list of claims does not exist or exists in a smaller degree, by bringing an action to declare the writ of execution unenforceable.
The issue of drafting the list of claims **in restructuring proceedings** is governed in Articles 84 – 102 of the Restructuring Act.
The list of claims is drawn up by the supervisor or insolvency practitioner based on the debtor's accounting books, his other documents, entries in land and mortgage register and other registers. In remedial proceedings opened on the basis of a simplified request the list of claims is drawn up in so far as possible on the basis of the list of claims drawn up in the preceding restructuring proceedings. If a composition proposal involves dividing the creditors into groups, the list of claims is drawn up taking account of the proposed division.
The list of claims separately indicates claims subject to composition by law and claims subject to composition with the creditor's consent.
In accelerated composition proceedings the debtor may object to the inclusion of a claim in the list of claims. Such a claim is considered to be a disputed claim. In this case the bankruptcy judge modifies the list of claims and the list of disputed claims accordingly.
In composition proceedings and in remedial proceedings, within two weeks of announcement of the date of submitting the list of claims and the list of disputed claims, the participants in the proceedings may raise an objection to the inclusion of a claim in the list of claims with the bankruptcy judge. The debtor may object if the list of claims is not in line with his statement on admitting or refusing to admit a claim. If the debtor has made no statement he may only object if he proves that he has made no statement for reasons beyond his control. Within the same time limit a debtor or creditor who has not been included in the list of claims may object to being omitted from the list.
An objection made after that time limit or inadmissible for other reasons or an objection that contains deficiencies not remedied by the objecting party or in respect of which the party has not paid the payable fee within the specified time limit is rejected by the bankruptcy judge.

The bankruptcy judge ignores statements and evidence not included in the objection unless the objecting party prove *prima facie* that it did not include them in the objection through no fault of its own or that including late statements and evidence will not delay the examination of the case.
Facts justifying the objection may only be proven by documentary evidence or an expert opinion. If the claim is ascertained by a final court judgment, the objection against the inclusion of the claim in the list of claims may only be based on events occurring after the closure of the litigation in which the judgment was passed.
The objection is examined at a non-public session within two months of being made, by the bankruptcy judge, his deputy or an appointed judge. If the judge examining the objection decides that a hearing is needed, he notifies the court supervisor or insolvency practitioner, debtor and creditor who raised the objection and the creditor whose claim has been objected to. Their failure to appear, even if justified, does not prevent the issuing of a decision. The bankruptcy judge, his deputy or an appointed judge may waive the taking of evidence based on an expert opinion if the expert has issued an opinion in other proceedings before a court, court of arbitration or administration body. In this case the documents containing the expert opinion are evidence.
A decision concerning the subject of an objection is open to appeal by the debtor, court supervisor or insolvency practitioners and creditors.
The list of claims is modified in so far as specified in the decision after the decision upholding the objection becomes final. In accelerated composition proceedings the list of claims is approved by the bankruptcy judge at the creditors' meeting.
In composition and remedial proceedings the bankruptcy judge approves the list of claims upon the lapse of the time limit for objections or, if an objection is raised, after the decision concerning the objection becomes final.
The bankruptcy judge approves the list of claims not affected by objections that have yet to be the subject of a final ruling if the sum of the claims concerned by those objections accounts for no more than 15 % of all claims entitling creditors to vote on a composition. Proceedings concerning those objections are discontinued by the court or bankruptcy judge if they have not been the subject of a final ruling by the time of voting on the composition.
If the list of claims is found to include a claim that is non-existent in full or in part or falls to a person other than the one named as a creditor in the list, the bankruptcy judge may remove the claim from the list *ex officio*. The decision to remove the claim from the list is served upon the creditor it concerns, the debtor and supervisor of insolvency practitioner. Those persons cannot appeal against the decision.
The supervisor or insolvency practitioner drafts a supplement to the list of claims if after submitting the list a claim is disclosed that has not been included in the list.
After the final refusal to approve a composition or the final discontinuation of restructuring proceedings an extract from the approved list of claims indicating the name of the creditor
and his claim serves as a writ of execution against the debtor.
After the final approval of a composition an extract from the approved list of claims along with an excerpt from a final decision approving the composition serves as a writ of execution against the debtor and the party that provided the security guaranteeing the implementation of the composition, if a document confirming the security has been submitted to the court, and against the party required to make an additional payment, if the composition provides for additional payments between creditors.
The debtor may request that a claim included in the list of claims be established not to exist or to exist in a smaller degree, if the debtor has made an objection in restructuring proceedings and the court has yet to deliver a final ruling on the claim.
After the extract from the approved list of claims is declared enforceable the debtor may raise the objection that a claim included in the list of claims does not exist or exists in a smaller degree by bringing an action to have the writ of execution declared unenforceable.

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

In **bankruptcy proceedings** the rules governing the distribution of proceeds are laid down in Articles 335-351 of the Bankruptcy Act.
First the costs of proceedings are covered and then, if the proceeds –allow, other bankruptcy estate liabilities as the relevant sums are added to the bankruptcy estate.
Maintenance claims for the period after the declaration of bankruptcy are satisfied by the receiver when they fall due, until the final distribution plan is drafted, each time for every entitled party in an amount not higher than the minimum wage. The remainder of those claims is not satisfied from the bankruptcy estate.
The claims to be paid out of the bankruptcy estate (after covering in full the costs of proceedings, bankruptcy estate liabilities and maintenance claims) fall into the following categories:
the first category - claims under an employment relationship for the period before the declaration of bankruptcy (applies *mutatis mutandis* to the claims of the Fund for Guaranteed Employee Benefits for the repayment, out of the bankruptcy estate, of benefits paid out to the bankrupt party's employees), except claims regarding the remuneration of the bankrupt party's representatives or of a person performing actions related to the management of or supervision over the bankrupt party's enterprise, farmers claims' under contracts for the supply of produce from their own farms, maintenance claims and benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement for the last three years before the declaration of bankruptcy, claims in respect of social insurance contributions and claims that arose in restructuring proceedings attributable to the insolvency practitioner's actions or claims attributable to the debtor's actions performed after the opening of restructuring proceedings, not requiring the consent of the creditors' committee or the consent of the court supervisor or performed with the consent of the creditors' committee or consent of the court supervisor, if bankruptcy was declared as a result of the examination of a simplified bankruptcy application, as well as claims concerning credits, loans, bonds, guarantees or letters of credit or other financing provided for in the composition adopted in restructuring proceedings and granted in connection with the implementation of that composition, if bankruptcy was declared as a result of the examination of a bankruptcy application submitted no later than three months after the final cancellation of the composition;
the second category - other claims, if not met in other categories, in particular taxes and public levies as well as other claims in respect of social insurance contributions;
the third category - interest on claims included in the categories above, in the order in which the principal amounts are paid as well as court and administrative fines and claims regarding donations and legacies;
the fourth category - partners' or shareholders' claims regarding a loan or another legal act with similar effects, especially the supply of goods on deferred terms to the bankrupt party that was a capital company in the five years preceding the declaration of bankruptcy, with interest.
If the sum to be distributed is not enough to meet all the claims, the claims of the next category are satisfied only after meeting in full the claims of the preceding category and if the sum to be distributed is not enough to meet all the claims of a given category, those claims are met in proportion to the amount of each of them.
Claims secured with a mortgage, pledge, registered pledge, fiscal pledge and maritime mortgage as well as rights expiring according to the provisions of the Act and the effects of disclosing personal rights and claims encumbering real property, a right to perpetual usufruct, a cooperative member's ownership right to residential premises or a sea-going vessel entered in the shipping register, are met out of the sum obtained through the liquidation of the encumbered party minus the costs of liquidating that party and other costs of bankruptcy proceedings in an amount no higher than a tenth of the sum obtained through the liquidation; however, the deducted part of the costs of bankruptcy proceedings cannot be higher than the part corresponding to the proportion of the value of

the encumbered object to the value of the total bankruptcy estate. Those claims and rights are met in the order of their priority. If the sum obtained through the liquidation of the encumbered party is used to meet both claims secured by a mortgage and expiring rights as well as personal rights and claims, the priority depends on the moment as which the entry of a mortgage, right or claim in the land and mortgage register begins to have effect.
Collateral claims covered by the security pursuant to separate provisions are met in an equal measure with the above claims. The sum falling to the creditor is counted first of all towards the main claim, then to interest and other collateral claims, with the costs of proceedings being covered at the end.
If real property, a right to perpetual usufruct, a cooperative member's ownership right to residential premises or a sea-going vessel entered in the shipping register is sold before meeting the claims secured with a mortgage or a maritime mortgage and other rights, including personal rights and claims that encumbered the object sold and that expired as a result of the sale, maintenance claims are met as well as benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement for the period after the declaration of bankruptcy and the remuneration for employees' work performed on the real property, vessel or premises for the three months preceding the sale but only up to three times the amount of the minimum wages.
In restructuring proceedings claims are met according to the composition approved by the court. The rules governing the meeting of claims are laid down in Articles 155-163 of the Restructuring Act.
The composition may provide for the division of creditors into groups encompassing different categories of interests, in particular:
creditors with claims under an employment relationship who have agreed to being covered by the composition;
farmers with claims concerning the supply of produce from their own farm;
creditors whose claims are secured on the debtor's assets by means of a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage as well as by the transfer of the ownership of an object, claim or another right to the creditor and who have agreed to being covered by such composition;
creditors who are partners or shareholders of a debtor being a capital company, holding the company's shares providing them with at least 5% votes at the partners' meeting or at the general shareholders' meeting,
The terms of restructuring the debtor's liabilities are the same for all creditors and if voting on the composition is conducted in groups of creditors, the same for creditors included in the same group, unless a creditor expressly agrees to less favourable terms.
Applying more favourable terms of restructuring a debtor's liabilities is acceptable for a creditor who, after the opening of restructuring proceedings, granted or is to grant financing in the form of a credit, bonds, bank guarantees, letters of credit or based on another financial instrument, necessary for the implementation of the composition.
The terms of restructuring claims under an employment relationship cannot deprive the employees of the minimum wage.
Restructuring applies equally to financial and non-financial obligations. If within a week of receiving a notification of the date of the creditors' meeting with a copy of the composition proposal the creditor objected to the restructuring of his claim as a non-monetary claim, submitting a statement to the supervisor or insolvency practitioner, or owing to the nature of the non-monetary claim restructuring is not possible, that claim is transformed into a monetary claim. That effect arises upon the opening of proceedings.
The terms of restructuring the claims referred to in Article 161(1)(3) may be differentiated according to their priority.

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

Bankruptcy proceedings are closed by the court after implementing the final distribution plan or when in the course of the proceedings all the creditors have been satisfied.
On the day on which the decision closing the bankruptcy proceedings becomes final the bankrupt party regains the right to manage and dispose of its assets. After the closure of the bankruptcy proceedings any pending proceedings opened by the receiver to declare invalid an action performed by the bankrupt party to the detriment of the creditors are terminated and mutual claims for the recovery of procedural costs lapse. In other civil proceedings the bankrupt party replaces the receiver.
In the 30 days following the announcement of the decision closing bankruptcy proceedings a bankrupt party that is a natural person may submit a request for drafting a creditor payment plan and for the discharge of the remaining debt that has not been met in the bankruptcy proceedings. The court rejects the request if the bankrupt party has caused his insolvency or materially increased its scale either intentionally or through gross negligence and if:
the evidence in the case points to facts offering grounds for disqualifying the bankrupt party from conducting business as a self-employed person or as part of a civil law partnership and from acting as a member of a supervisory board, a member of an audit committee, a representative of a natural person conducting business activity in the same branch of business, of a commercial company, state-owned enterprise, cooperative, foundation or association or the bankrupt party did not perform properly the obligations imposed upon him in the bankruptcy proceedings or
in the period of ten years preceding the submission of the bankruptcy application the bankrupt party was subject to bankruptcy proceedings in which all or part of his debts were discharged, unless the bankrupt party's insolvency occurred or its scale increased despite due diligence on the part of the bankrupt party or
in the period of ten years preceding the submission of the bankruptcy application the creditor payment plan drafted for the bankrupt party was cancelled pursuant to Article 370e(1) or (2) or Article 49120 or
in the period of ten years preceding the submission of the bankruptcy application a legal action performed by the bankrupt party was found, in final proceedings, to be detrimental to creditors
- unless the discharge of the remainder of the bankrupt party's debt is justified on the grounds of equity or humanitarian need.
In its decision on drafting the creditor payment plan the court specifies to what degree and in what time (no longer than 36 months) the debtor must pay the debts admitted in the list of claims and not paid in the course of bankruptcy proceedings based on distribution plans and what part of the bankrupt party's liabilities arising before the declaration of bankruptcy will be discharged after implementing the creditor payment plan. While the creditor payment plan is being implemented, enforcement proceedings cannot be opened in respect of claims that arose before the declaration of bankruptcy (except claims arising out of the obligations referred to in Article 370f(2) and claims not disclosed by the bankrupt party if the creditor did not participate in the proceedings), nor may the bankrupt party perform legal actions that might undermine its ability to implement the creditor payment plan (in exceptional cases the court may, at the bankrupt party's request, consent to or approve such a legal action).
By the end of April each year the bankrupt party must submit to the court a report on the implementation of the creditor payment plan for the preceding calendar year, disclosing the revenue generated, amounts repaid and assets acquired with a value higher than the average monthly remuneration in the enterprise sector excluding the payment of a dividend on profits in the third quarter of the preceding year.
The court may amend the creditor payment plan if the bankrupt party is unable to meet the obligations laid down in that plan, at that party's request and after hearing the creditors. It may also extend the period for repaying debts no by up to 18 months.

If the bankrupt party's economic situation improves materially while the creditor payment plan is being implemented and that improvement is attributable to causes other than an increase in wages or revenue generated by the commercial activity performed personally by the bankrupt party, the creditor and the bankrupt party may submit a request for the creditor payment plan to be amended. The court issues a decision on in the amendment of the creditor payment plan after hearing the bankrupt party and the creditors covered by the payment plan.

The court, acting *ex officio* or at the creditor's request, cancels the creditor payment plan if the bankrupt party fails to perform the obligations specified in the creditor payment plan after hearing the bankrupt party and the creditors covered by the payment plan, unless the failure to perform obligations is insignificant or the discharge of the remainder of the bankrupt party's debt is justified on the grounds of equity or humanitarian need; this applies mutatis mutandis if the bankrupt party:

has not submitted a report on the implementation of the creditor payment plan on time;

failed to disclose revenue generated or assets acquired in the report on the implementation of the creditor payment plan;

has performed a legal action that might undermine its ability to implement the creditor payment plant without the consent of the court or that action has not been approved by the court;

concealed assets or is found, by a final ruling, to have performed a legal action to the detriment of creditors.

If the payment plan is cancelled, the bankrupt party's liabilities are not discharged.

The court issues a decision confirming the implementation of the payment plan and discharging the bankrupt party's liabilities that arose before the declaration of bankruptcy and were not satisfied through the implementation of the creditor payment plan after the bankrupt party has performed the obligations specified in the creditor payment plan. Maintenance claims, liabilities related to benefits paid as compensation for causing illness, inability to work, disability or death, payable fines imposed by the court as well as obligations to compensate for the damage and suffering inflicted, obligations to pay supplementary damages or cash benefits adjudicated by the court as a penal or probationary measure as well as obligations to compensate for damages resulting from a crime or offence found to have taken place in a final judgment and claims that the bankrupt party intentionally failed to disclose, if the creditor did not take part in the proceedings, are not discharged.

Changes in legal relationships made pursuant to the provisions of the Act are binding for the bankrupt party and for the other party also after the closure of bankruptcy proceedings, unless the provisions of a separate legislative act stipulate otherwise.

Restructuring proceedings are closed when the court's decision approving or refusing to approve the composition becomes final. Then the debtor regains the right to manage his assets if he was deprived of it or if it was limited, unless the composition stipulates otherwise (Article 171 of the Restructuring Act).

After the implementation of the composition or after the enforcement of the claims covered by the composition the court, at the request of the debtor, composition supervisor or another person entitled under the composition to implement or supervise the implementation of the composition, issues a decision confirming the implementation of the composition (Article 172 of the Restructuring Act).

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

If after the closure of **bankruptcy proceedings** against natural persons conducting economic or professional activity a payment plan is drafted, the creditor may request the court to cancel the creditor payment plan if the bankrupt party fails to perform obligations specified in the plan or fails to submit a report on the plan's implementation on time, fails to disclose revenue generated or assets acquired in the report on the implementation of the creditor payment plan, performs without the consent of the court a legal action that might undermine its ability to implement the creditor payment plan or that action has not been approved by the court, fails to disclose his assets or is found, by a final ruling, to have performed a legal action to the detriment of creditors (Article 370e of the Bankruptcy Act).

In **restructuring proceedings** the creditor may request the court to cancel the composition if the debtor does not comply with its provisions or it is obvious that the composition will not be implemented (it is presumed that the composition will not be implemented if the debtor fails to meet liabilities approved after the composition approval). The requesting party may appeal against a decision rejecting the request (Article 176 of the Restructuring Act).

If the composition is cancelled or expires, the existing creditors may assert their claims in the original amounts and the sums paid out based on the composition are counted towards them. A mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage secures a claim up to the amount that has yet to be satisfied (Article 177 of the Restructuring Act).

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

Bankruptcy proceedings basically involve two stages, i.e. proceedings for the declaration of bankruptcy and proceedings after the declaration of bankruptcy.

The costs of proceedings for the declaration of bankruptcy are covered first out of the advance payment made by the applicant in an amount equivalent to the average monthly remuneration in the enterprise sector excluding the payment of a dividend on profits in the third quarter of the preceding year as announced by the President of the Central Statistical Office. If proceedings are opened at the creditor's request, their costs are borne by the bankrupt party if bankruptcy is declared or if the request is rejected owing to the scantiness of the estate.

The costs of proceedings after the declaration of bankruptcy are covered out of the bankruptcy estate. If the insolvent debtor's assets are insufficient to cover the costs of proceedings or suffice only to cover those costs, the court rejects the bankruptcy application.

The costs of **restructuring proceedings** are borne by the debtor. The costs payable by a debtor deprived of the right to manage are paid by the insolvency practitioner at the request of the court or of the bankruptcy judge.

Participants in proceedings bear the costs related to their participation.

The costs of proceedings opened following an objection to the inclusion of another creditor's claim are payable by the debtor to the objecting creditor if the objection resulted in a refusal to include the contested claim, unless the debtor challenged the inclusion of the claim in the list of claims in a statement submitted pursuant to Article 86(2)(9) or raised an objection.

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

In bankruptcy proceedings the legal actions performed by the bankrupt party in respect of the bankruptcy estate are void. The disposal by the bankrupt party of all or part of an inheritance or of an inheritance share is also void, as is that party's disposal of a share in an object included in the inheritance and that party's consent for another heir to dispose of a share in an object included in the inheritance.

Under pain of nullity, the consent of the creditors' committee is required for the following actions (Article 206 of the Bankruptcy Act):

the continued management of the enterprise by the receiver if it is to last more than three months after the declaration of bankruptcy;

waiving the sale of the enterprise as a whole;

the direct sale of the assets included in the bankruptcy estate;

contracting loans or credits and encumbering the bankrupt party's assets with limited proprietary rights;

the admission, waiver of entering into a composition regarding disputed claims and bringing a dispute before a court of arbitration.

An exception may be invoked when one of the above actions has to be performed immediately and concerns a value of no more than PLN 10 000, in which case the receiver, court supervisor or insolvency practitioner may perform it without the consent of the committee.

Moreover, the consent of the creditors' committee is not required for the sale of movable assets if the estimated value of all movable assets included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000 and for the sale of claims and other rights, if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000. This also applies to consent for the sale of claims and other rights if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the list of claims, is no higher than the equivalent of PLN 50 000.
An entry in the land and mortgage register or another register encumbering the bankrupt party's assets with a limited property right made without the consent required pursuant to Article 1 is subject to removal *ex officio*. The basis for the removal is a final decision by bankruptcy judge finding the entry to be inadmissible (Article 206(5) of the Bankruptcy Act).
The bankruptcy judge specifies the actions that must not be performed by the receiver without his consent or without the consent of the creditors' committee. This means that the bankruptcy judge may extend the catalogue of actions mentioned in Article 206 that require the consent of the creditors' committee under pain of nullity.
Legal actions by which the bankrupt party disposed of its assets in the 12 months before submitting the bankruptcy application are null if they were performed free of charge or against payment but the value of the bankrupt party's performance manifestly exceeded the consideration obtained by that party or reserved for that party or for a third party. This rule also applies *mutatis mutandis* to a court settlement, claim admission and claim waiver.
Also the security for and repayment of debt not due for payment have no effect if performed by the bankrupt party in the six months before the bankruptcy application was submitted. However, the party who obtained the payment or security may, by way of a claim or objection, seek the admission of those actions as effective if it was not aware of the existence of grounds for bankruptcy at the time when those actions were performed.
The above rules do not apply to securities established before the declaration of bankruptcy in connection with forward/future financial operations, loans of financial instruments or the sale of securities under repurchase agreements referred to in Article 85(1).
At the request of a third party the bankruptcy judge may order that person's mutual performance to be returned out of the bankruptcy estate, if that performance was rendered in connection with a legal action by that third party and the bankrupt party concerning property included in the bankruptcy estate. The provisions on undue performance apply *mutatis mutandis* to this type of performance. The return of that performance may be ordered if the legal action occurred after the declaration of bankruptcy and before the publication of the bankruptcy decision in the Register, while the third party exercising due diligence could not know of the declaration of bankruptcy (Article 77 of the Restructuring Act).
The assignment of a future claim has no effect in relation to the bankruptcy estate if that claim arises after the declaration of bankruptcy, unless the agreement assigning the claim was concluded no later than six months before the submission, at a certified date, of a written bankruptcy application.
A legal action performed against payment is declared invalid in relation to the bankruptcy estate by the bankruptcy judge *ex officio* or at the receiver's request if it was performed by the bankrupt party in the six months before submitting the bankruptcy application with his spouse, a relative, including by marriage, in the direct line, a relative, including by marriage, in the collateral line to the second degree inclusive, with a person in an actual relationship with the bankrupt individual, running a household with him or being his adoptive parent or child, unless the other party to the action proves that the creditors' interest was not damaged. The decision by the bankruptcy judge may be appealed against.
The above rule also applies to actions performed by the bankrupt party with a company in which he is a board member or the sole partner or shareholder and with companies in which persons named in the first paragraph are board members or sole partners or shareholders. It also applies *mutatis mutandis* to actions performed by a bankrupt party that is a company or legal person, if performed with its partners, their representatives or spouses and with affiliated companies, their partners and the representatives and spouses of those persons and to actions performed by a bankrupt party that is a company with another company, if one was the parent company or if that company is the parent company of both the bankrupt party and the other party to the action.
Acting *ex officio* or at the receiver's request the bankruptcy judge declares a specific part of remuneration, falling to a period before the declaration of bankruptcy but no more than six months before the submission of the bankruptcy application, invalid in relation to the bankruptcy estate if the remuneration for work performed by a person representing the bankrupt party or an employee performing enterprise management tasks or the remuneration of a person providing services related to the management of or supervision over the bankrupt party's enterprise specified in an employment contract, a service contract or a resolution of the bankrupt party's management body concluded or passed before the declaration of bankruptcy is manifestly higher than the average remuneration for this type of work or services and is not justified by the amount of work, even if that remuneration has already been paid.
The bankruptcy judge may declare the remuneration of the above-mentioned persons for the period after the declaration of bankruptcy wholly or partly invalid in relation to the bankruptcy estate, if it is not justified by the amount of work as the management has been taken over by the receiver.
At the receiver's request the bankruptcy judge also declares the following actions invalid in relation to the bankruptcy estate:
encumbering the bankrupt party's assets with a mortgage, pledge, registered pledge or maritime mortgage, if the bankrupt party was not a personal debtor to the secured creditor and the encumbrance was established in the 12 months before the submission of the bankruptcy application and no performance was rendered to the bankrupt party in connection with its establishment;
encumbering the bankrupt party's assets with a mortgage, pledge, registered pledge or maritime mortgage, if the property encumbrance was established in return for a performance of a value disproportionately low compared to the value of the established security;
the above encumbrances regardless of the value of the performance, if they secure the debts of persons referred to in Article 128 of the Bankruptcy Act) (persons close or related to the bankrupt party), unless the other party proves that the creditors' interest was not damaged;
contractual penalties stipulated for the non-performance or improper performance of an obligation, if the obligation was largely performed by the bankrupt party or if the contractual penalty is manifestly exorbitant.
Legal actions performed by the bankrupt party to the creditors' detriment in matters not covered by the Bankruptcy Act are governed mutatis mutandis by the provisions of the Civil Code on the protection of the creditor against the debtor's insolvency.
In restructuring proceedings, in accordance with Article 129 of the Restructuring Act, under pain of nullity the following actions by the debtor or the insolvency practitioner require the consent of the creditors' committee:
encumbering elements of the composition or remedial estate with a mortgage, pledge, registered pledge or maritime mortgage in order to secure a claim not subject to composition;
the transfer of the ownership of an object or a right in order to secure a claim not subject to composition;
encumbering elements of the composition or remedial estate with other rights;
contracting credits or loans;
concluding an agreement on the leasing of the debtor's enterprise or of its organised part or another similar agreement;
(The above actions performed with the consent of the creditors' committee cannot be considered invalid in respect of the bankruptcy estate.)
the sale, by the debtor, of real property or other assets worth over PLN 500 000.
The provisions of a contract to which the debtor is a party that prevent or hinder the achievement of the goal of accelerated composition proceedings are invalid in relation to the composition estate (Article 248, Article 273, Article 297 of the Restructuring Act).

In remedial proceedings the debtor's legal actions through which he disposed of his assets, if the value of the performance rendered by the debtor is substantially higher than the value of the performance rendered to the debtor or reserved for the debtor or for a third party, which took place in the 12 months before the submission of the request to open remedial proceedings, are invalid in relation to the remedial estate. This rule also applies *mutatis mutandis* to a court settlement, claim admission and claim waiver.
Securities in respect of the remedial estate are also invalid if they have been established in direct connection with performance being rendered to the debtor, established by the debtor in the 12 months before the submission of the request to open remedial proceedings and securities in the part which, on the day of establishing the security, is more than half higher than the value of the secured performance rendered to the debtor along with collateral claims specified in the document forming the basis for the establishment of the security, established in the 12 months before the submission of the request to open remedial proceedings (Article 304 of the Restructuring Act).
In remedial proceedings the bankruptcy judge, acting *ex officio* or at the insolvency practitioner's request, declares a specific part of remuneration, falling to a period before the declaration of bankruptcy but not longer than three months before the submission of the request to open remedial proceedings, invalid in relation to the remedial estate if the remuneration for work performed by the debtor's representative or employee performing enterprise management tasks or the remuneration of a person providing services related to the management of or supervision over the debtor's enterprise specified in an employment contract, a service contract or a resolution of the debtor's management body concluded or passed before the opening of remedial proceedings is manifestly higher than the average remuneration for this type of work or services and is not justified by the amount of work, even if that remuneration has already been paid.
The bankruptcy judge may declare the remuneration of the above-mentioned persons, falling to the period after the opening of remedial proceedings, wholly or partly invalid in relation to the remedial estate, if it is not justified by the amount of work as the management has been taken over by the insolvency practitioner (Article 305 of the Restructuring Act).
The insolvency practitioner may institute proceedings to declare actions invalid and other proceedings in which a claim is based on the invalidity of an action. An action cannot be declared invalid after one year has elapsed since the opening of remedial proceedings, unless that power expired earlier pursuant to the Civil Code. That time limit does not apply if the request to declare an action ineffective was made by way of an objection.
Legal actions performed by the bankrupt party to the creditors' detriment in matters not covered by the provisions discussed above may be challenged accordingly pursuant to the provisions of the Civil Code on the protection of the creditor against the debtor's insolvency (Articles 306 – 308 of the Restructuring Act).
Last update: 13/11/2019

Insolvency/bankruptcy - Portugal

Preliminary remark:

The legal basis of the information provided in this file is laid down in the Código da Insolvência e da Recuperação de Empresas (Code of Business Insolvency and Recovery) [hereinafter referred to by its Portuguese abbreviation, CIRE], approved by Decree-Law No 53/2004 of 18 March 2004 and most recently amended by Decree-Law No 57/2022 of 25 August 2022 .

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be opened against any natural or legal person, and against the estate in abeyance; associations having no legal personality and special commissions; civil law companies; commercial companies or civil law companies having a commercial form up to the date of final registration of the contract by which they are incorporated cooperatives, prior to the registration of their incorporation; individual limited liability entities; and any other autonomous assets (Article 2(1)(a) to (h) CIRE).
Public legal persons and corporate public entities; insurance undertakings, credit institutions, financial corporations, investment firms providing services that entail holding funds or securities belonging to third parties and collective investment undertakings may not be subject to insolvency proceedings since they are incompatible with the special arrangements governing such entities (Article 2(2) CIRE).

2 What are the conditions for opening insolvency proceedings?

When debtors are unable to fulfil all of their outstanding obligations (Article 3 CIRE).
The purpose of insolvency proceedings is to satisfy creditors with the procedure provided for in an insolvency plan (in the absence of which, the liquidation of the insolvent debtor's assets) and to distribute the proceeds accrued by the creditors (Article 1(1) CIRE).
Where a debtor undertaking is experiencing economic difficulties or is at imminent risk of insolvency, it may ask the court to launch a **special revitalisation procedure** (Articles 17-A to 17-I CIRE).
Where any other type of debtor is experiencing economic difficulties or is at imminent risk of insolvency, it may ask the court to launch a **special payment agreement procedure** (Articles 222-A to 222-J).

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 is made up of all the debtor's assets at the time of the declaration of insolvency.
Any property-related assets and rights **acquired during the course of the insolvency proceedings** - for example, property rights, rights of use, retention of title, etc. (Article 46(1) CIRE) - that can be converted into money also form part of the insolvency estate.
In cases where the insolvent party is married and has joint ownership of assets, the insolvency estate also includes the marital portion of the couple's assets.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Under the insolvency judgment, in cases where an undertaking is included in the insolvency, **the debtor may themselves be responsible for handling the insolvency estate** (Article 223 CIRE) provided that the requirements laid down in Article 224 CIRE have been met.
The insolvency administrator, appointed by the judge (Article 52(1) CIRE), handles, and plays a central role in, insolvency proceedings.
The insolvency administrator is responsible for, inter alia:
- preparing for the payment of the insolvent party's debts to the insolvency estate; and - overseeing the sale of assets forming part of the insolvency estate in order to distribute the proceeds to creditors and to ensure that the insolvent party's rights are preserved and enjoyed, and that the undertaking does not cease operations; and where possible preventing the economic situation from becoming any worse (Article 55(1) CIRE);

5 Under which conditions may set-offs be invoked?

Claims against the insolvent estate may be set off against debts to the said insolvent estate, should the requirements of Article 99 CIRE be met.

This arrangement allows insolvency creditors to set off their claim against debts owed to the insolvency estate, so that the reciprocal claims can be wiped out. Thus, the creditor's claim is recovered without their debt having to be paid to the estate, thereby avoiding the pool of concurrent creditors.
This is a means of facilitating payment and preventing cross-payment.
In addition to the general rule laid down in Article 99 of CIRE, there are other legal provisions that provide for the possibility of set-offs, namely Articles 102(3)(e), 154(1), 242(3) and 286 CIRE.

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

The effects of insolvency on current contracts to which the debtor is party depend on the nature of the contract. They are set out in Articles 102 to 119 of CIRE.
As a rule, bilateral contracts (which give rise to obligations between both parties) **are performed in the same way**, and the terms agreed between the parties are maintained.
However, if, at the date of the declaration of insolvency, the contract has not been complied with in full, its implementation is suspended until the insolvency administrator has issued a statement regarding implementation or non-implementation (Article 102(2) CIRE). Where the insolvency administrator refuses to implement the contract, neither party is entitled to restitution of what they have already put in (Article 102(3) CIRE).
For example:

- **Sale and purchase agreement, with retention of title** (where the seller is the insolvent party): the other party may require them to perform the contract if the item has already been delivered to them at the time of the declaration of insolvency (Article 104(1) CIRE);
- **Promissory contract** (where the insolvent party is the promissory seller): performance of the contract cannot effectively be refused if the item has a history in favour of the promissory purchaser (i.e. where the promissory seller has delivered the keys to a particular property to the promissory purchaser) - Article 106(1) CIRE.

If the debtor has carried out acts detrimental to the insolvency estate (i.e. acts that diminish, hamper, impede or place at risk the satisfaction of creditors) in **the two years preceding the date of the declaration of insolvency**, they may be settled in accordance with the provisions of Article 120 et seq. CIRE.

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

The declaration of insolvency leads, inter alia, to **the suspension of any enforcement proceedings or measures brought by insolvency creditors** that may affect the assets of the insolvency estate and prevents the instigation or pursuit of any enforcement proceeding brought by the insolvency creditors (Article 88(1) CIRE): for example, if the insolvent party has an attachment against their earnings, this is suspended at the time of the insolvency declaration.
In turn, suspended actions are removed for the insolvent debtor, when they have been declared insolvent and once the insolvency proceedings are closed, by final apportionment or due to insufficient assets (Article 88(3) CIRE).
The declaration of insolvency results in all obligations of the insolvent party that are not subject to a suspensive condition becoming immediately payable (Article 91(1) CIRE).
The judgement of declaration of insolvency will lead to the suspension of all limitation and prescription periods which can be challenged by the debtor, during the course of proceedings (Article 100(1) CIRE).

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

Once insolvency has been declared, all proceedings brought against the debtor and relating to the assets included in the insolvency estate may be attached to the insolvency proceedings, as requested by the insolvency administrator, citing procedural expediency (Article 85(1) of the CIRE). The insolvency administrator will therefore be responsible for standing in for the insolvent party in all actions, even without the consent of the opposing party (Article 85(3) CIRE).

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

Insolvency creditors actively participate in the proceedings and must lodge their claims **within 30 days**, the time limit set in the judgment (Articles 36(1)(j) and 128(1) CIRE).
Any holders of claims of a financial nature against the insolvent party or claims guaranteed by assets forming part of the insolvency estate and whose establishment predates the declaration are considered insolvency creditors.
From the date of the insolvency declaration onwards, **all payments must be made to creditors in the context of the insolvency proceedings**, which ensures that no enforcement action may be launched and pursued against the insolvency estate.
Creditors are therefore entitled to take part in the creditors' meeting in accordance with Article 72(1) CIRE.
Claims confer one vote per euro or fraction thereof if such claims have already been recognised by a final decision handed down in the attachment verifying and ranking the claims, or in a later verification measure, or when both of the conditions laid down in Article 73(1)(a) and (b) CIRE are met by the creditor.

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

The insolvency administrator may use or dispose of assets from the insolvent estate pursuant to Articles 149, 150, 157 and 158 CIRE.
The sale of the assets of the insolvency estate is an essential transaction for the satisfaction of claims. This is the responsibility of the insolvency administrator, who has freedom of choice in that regard.
After the insolvency judgment has become final and the creditors' meeting has been held to examine the report by the insolvency administrator, the latter sells all the assets seized for the insolvency estate, provided that the creditors have not opposed such a sale at the abovementioned meeting (Article 158(1) of the CIRE).
Creditors with a security in rem over the assets to be sold must have their say regarding the type of sale and must be informed about the base value set and the price of the proposed disposal; subject to certain requirements, they may propose that they themselves, or a third party, acquire the assets (Article 164(2) and (3) CIRE).
The proceeds from the disposal of assets, excluding sums essential to day-to-day expenses, must be paid into a current account of the insolvency estate's management, with a credit institution chosen by the administrator (Articles 150 (6) and 167 (1) of the CIRE).

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?

1. There are three types of insolvency claim:
i) secured and privileged;
ii) lower-ranking and
iii) common claims.

Secured claims are those enjoying collateral, including preferential rights, and incorporating capital and interest up to the value of the assets secured (Article 47(1) CIRE). There are, however, certain guarantees that are removed by a declaration of insolvency. The holders of such guarantees lose their status as secured creditors (Article 97 CIRE).
Privileged claims are those carrying general preferential rights over assets forming part of the insolvency estate, which may be movable and immovable property (Article 47(4)(a) CIRE).

Lower-ranking claims are those listed in Article 48 CIRE, 'except when they carry general or special preferential rights, or legal mortgages, that do not expire following the declaration of insolvency' (Article 47(4)(b) CIRE).
All other claims are referred to as **common claims** (Article 47(4)(c) CIRE).

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

Insolvency creditors, including the Public Prosecutor's Office, must - within the time limit laid down in the insolvency judgment - submit an application to have their claims verified. Such applications must be accompanied by any supporting documents they may have (Article 128(1) CIRE).
The rules applying to the submission, verification and admission of claims are laid down in Articles 128 to 140 CIRE.

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

The rules applicable to the payment of creditors provide for differences in treatment depending on whether claims are secured, privileged, common or lower-ranking, pursuant to Articles 172 to 184 CIRE.
Also provided for in these provisions are: the possibility of third-party debt payment being subject to subrogation; and arrangements applicable when there is joint liability of debtors.

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

Insolvency proceedings may be closed:
- after the final apportionment;
- after the judgment approving the insolvency plan;
- at the request of the debtor (provided the latter has ceased to be in a state of insolvency) - Article 231 CIRE;
- where the insolvency administrator concludes that the insolvency estate is insufficient to meet the debts – Article 232 CIRE.

Once insolvency proceedings are closed, all the effects of the insolvency declaration cease, and the debtor regains the right to dispose of their assets, which they may sell or give away. They are then free to manage their business and assets (Article 233(1) CIRE).
Most importantly, insolvency creditors no longer face restrictions on the exercise of their rights against the debtor, other than set out in insolvency or payment plans.
The conditions and the effects of closure of the insolvency proceedings are laid down in Articles 231 to 234 CIRE.

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

In principle, after closure of proceedings, insolvency creditors may exercise their rights against the debtor without any restrictions other that those set out in possible insolvency and payment plans and in Article 242(1) of CIRE.
To exercise their rights, the enforceable instrument will be the judgement approving the payment plan and the judgement verifying the claim or, if applicable, the decision handed down in a later verification action, together with the judgement approving the insolvency plan.
Article 242(1) of CIRE states that, in the event of exoneration of a natural person's liabilities, no enforcements will be allowed on the debtor's assets which are intended to meet insolvency claims during the assignment period.

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

The costs and the expenses of the insolvency proceedings are deemed to be debts of the insolvent estate (Article 51 CIRE).
Before paying any insolvency claims, **the insolvency administrator will deduct from the estate any assets or entitlements necessary to pay the costs and expenses of the proceedings** including those expected to arise before the closure of the proceedings.
The payment of the costs and expenses of proceedings is assigned in accordance with Article 172 CIRE.
In the event of exoneration of the natural person's liabilities, the trustee will use the sums received at the end of each year during the assignment period, firstly, to pay the costs and expenses of the proceedings, in accordance with Article 241 CIRE.

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

Articles 120 to 127 CIRE provide for the possibility of resolving acts detrimental to the creditors' collective interests (acts which diminish, hamper, impede, place at risk or delay the satisfaction of the insolvency creditors), provided that the circumstances set out therein have been met.

Applicable legislation

Insolvency and Business Recovery Code (CIRE)
Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
Code of Civil Procedure (Código de Processo Civil)

Last update: 26/03/2024

Insolvency/bankruptcy - Romania

1 Who may insolvency proceedings be brought against?

The procedures provided for by Law No 85/2014 on insolvency prevention and insolvency proceedings apply to entrepreneurs as defined in Article 3(2) of the Civil Code, except for those whose insolvency is governed by special rules. (Article 3 of Law No 85/2014 on insolvency prevention and insolvency proceedings).
Natural persons may be subject to insolvency proceedings governed by Law No 85/2014 on professional debt. As regards personal debt, the procedure provided for by Law No 151/2015 on insolvency proceedings in respect of natural persons may be applied.
Insolvency proceedings do not apply to pre-university and university educational establishments and institutions and the bodies indicated in Article 7 of Government Order No 57/2002 on scientific research and technological development, approved with amendments by Law No 324/2003, as amended and supplemented (Article 2(4) of Law No 85/2014).

2 What are the conditions for opening insolvency proceedings?

A. If the proceedings are opened at the request of a debtor, there must be a state of insolvency (i.e. the funds available are not sufficient to meet a claim that is certain, liquid and due, of over RON 50 000); if proceedings are opened at the request of a creditor, there must be a claim that is certain, liquid and due, of over RON 50 000, and a state of insolvency (which is presumed to have occurred if the debt is still not paid 60 days after the due date).

B. Preventive procedures (restructuring agreement or coming to an arrangement with creditors) apply to debtors who are struggling (Article 5(26)(2) of Law No 85/2014) but not insolvent. The debtor may request the initiation of such proceedings and must prove that they are struggling by means of a report drawn up by the administrator of an arrangement with creditors.

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 debtor's wealth consists of all assets and property rights, including those acquired during the insolvency proceedings, which can be made subject to enforced recovery (*executare silită*) under the Code of Civil Procedure (Article 5(5) of Law No 85/2014).

4 What powers do the debtor and the insolvency practitioner have, respectively?

A. After the insolvency proceedings have been opened, a special administrator (*administrator special*) and an insolvency practitioner (*practician în insolvență*) are appointed; depending on the type of proceedings, the insolvency practitioner is either a court-appointed administrator (*administrator judiciar*) in a reorganisation under the supervision of the court, or a court-appointed liquidator (*lichidator judiciar*) if the company is to be wound up (*faliment*).

The special administrator

The special administrator is a natural or legal person appointed by the general meeting of the debtor's shareholders, partners or members, who is empowered to represent their interests in the proceedings and, if the debtor is allowed to manage their own affairs, to perform necessary administrative acts in the debtor's name and on their behalf (Article 5(4) of Law No 85/2014).

The special administrator has the following duties:

(a) to take part, as the debtor's representative, in the trial of actions of the kind referred to in Articles 117-122 or of actions resulting from non-compliance with Article 84;

(b) to file objections under the procedure regulated by this law;

(c) to propose a reorganisation plan;

(d) after a plan has been confirmed, and provided the debtor has not been deprived of their right to manage their affairs, to conduct the debtor's affairs under the supervision of the court-appointed administrator;

(e) after winding up proceedings have begun, to participate in the taking of the inventory and sign the record, to receive the final report and the financial statement, and to take part in the meeting convened to settle any objections and approve the report;

(f) to receive notification of the closure of proceedings.

After the debtor is deprived of their right to manage their affairs, they are represented by the court-appointed administrator or liquidator, who also conducts the debtor's business; the special administrator's task is then limited to representing the interests of the shareholders, partners or members (Article 56 of Law No 85/2014).

Court-appointed administrator (administrator judiciar)

A court-appointed administrator may be a natural or legal person (including the legal person's representative), and must by law be an insolvency practitioner.

The main duties of the court-appointed administrator are:

(a) to review the debtor's economic situation and the documents submitted, to prepare a report proposing either the commencement of simplified proceedings or the continuation of the monitoring period as part of the ordinary proceedings, and to submit the report for approval by the delegated judge (*judecător-sindic*) within a deadline set by the judge, which cannot exceed 20 days from the administrator's appointment;

(b) to review the debtor's business and to prepare a thorough report setting out the causes and circumstances that led to the state of insolvency, specifying any potential preliminary evidence or indications regarding the persons to whom that state may be imputable and the presence of grounds for holding them liable, and exploring any real possibility of reorganising the debtor's business or explaining the reasons why reorganisation would not be possible, and to enter the report in the case file within a deadline set by the delegated judge, which may not exceed 40 days from the administrator's appointment;

(c) if the debtor has failed to meet their obligation to provide their accounting records within the legal time-limits, to prepare those records, and if the accounting records have been provided by the debtor, to check, correct and complete them;

(d) to prepare a plan for the reorganisation of the debtor's business, depending on the content of the report referred to in point (a);

(e) to supervise the debtor's asset management operations;

(f) to conduct the debtor's business, in whole or in part, in the latter case observing the delegated judge's express specifications regarding the administrator's duties and regarding the conditions for the execution of payments from the debtor's asset account;

(g) to convene, chair and carry out secretarial tasks during meetings of creditors or of shareholders, partners or members of a debtor that is a legal person;

(h) to file actions for the annulment of fraudulent acts or transactions on the part of the debtor that are performed to the detriment of creditors' rights, and of certain transfers of assets, business transactions concluded by the debtor and guarantees contracted by the debtor that are likely to undermine creditors' rights;

(i) to notify the delegated judge, as a matter of urgency, if the administrator finds that the debtor holds no assets or if they are insufficient to cover the legal expenses;

(j) to terminate certain contracts entered into by the debtor;

(k) to verify claims and, where applicable, make objections to them, to notify the creditors where the claims have not been admitted or have been only partially admitted, and to draw up the lists of claims;

(l) to recover claims, to pursue the recovery of claims with respect to the debtor's assets or sums of money transferred by the debtor before the proceedings were opened, and to file and pursue actions seeking recovery of claims held by the debtor, for which purpose they may engage the services of lawyers;

(m) to conclude compromises, discharge debts, discharge guarantors, and to waive collateral, subject to confirmation by the delegated judge;

(n) to inform the delegated judge of any issue that would require a decision by the latter;

(o) to draw up an inventory of the debtor's assets;

(p) to order the evaluation of the debtor's assets, to be completed by the date set for the submission of the final list of claims;

(q) to send a notice for publication in the Bulletin of Insolvency Proceedings (BPI) with regard to the entry of the evaluation report in the case file, within two days of the entry.

The delegated judge may by decision (*încheiere*) charge the court-appointed administrator with any other duties, in addition to those listed under paragraph 1, except for those that are by law within the judge's exclusive jurisdiction.

The court-appointed administrator will submit a monthly report describing how they have performed their duties, including those relating to the follow-up of operations carried out on the basis of prior approval, justifying the expenditure incurred in the administration of the procedure and any other expenses paid out of the debtor's assets and, where applicable, detailing progress with the inventory. The report will include information regarding compliance with fiscal obligations, obtaining or renewing approval for carrying out the activity, documents drawn up by the supervisory bodies and the remuneration of the court-appointed administrator, setting out how this remuneration is calculated (Article 59(1) of Law No 85/2014).

In order to accomplish their duties, the court-appointed administrator may engage the services of professionals such as lawyers, accountants, valuers or other specialists. No person may be designated in accordance with paragraph (1) if they are bound by a contract that could cause a conflict of interest; in this case, they must stand down or they may be challenged pursuant to Articles 43 and 44 of Law No 134/2010 on the Code of Civil Procedure, republished, as amended and supplemented (Article 61(2)). The court-appointed administrator and any of the creditors may put forward objections against the valuation reports prepared in the case.

Court-appointed liquidator (*lichidator judiciar*)

If the delegated judge issues a winding-up order, they shall appoint a liquidator to apply it. The duties of a court-appointed administrator cease on the date when the delegated judge establishes the duties of the liquidator. The main duties of the court-appointed liquidator are:

(a) to review the business of the debtor with regard to whom the simplified procedure is opened, with reference to the factual situation, and to prepare a thorough report on the causes and circumstances that led to the insolvency, specifying the persons to whom the state of insolvency may be imputable and the presence of grounds for holding them liable;

(b) to conduct the debtor's business;

(c) to file actions for the annulment of fraudulent acts and transactions performed by the debtor to the detriment of the creditors' rights, and of transfers of ownership under property law, business transactions concluded by the debtor and grounds of preference established by the debtor that are likely to harm the creditors' rights;

(d) to apply seals, to draw up an inventory of the assets and to take the appropriate action for their conservation;

(e) to terminate certain contracts entered into by the debtor;

(f) to verify claims and, where applicable, to make objections to them, to notify the creditors where the claims have not been admitted or have been only partially admitted, and to draw up the lists of claims;

(g) to pursue the recovery of claims with respect to the debtor's assets resulting from the transfer of assets or sums of money by the debtor before the proceedings were opened, to recover claims, and to file and pursue actions seeking recovery of the claims held by the debtor, for which purpose they may engage the services of lawyers;

(h) to receive payments on the debtor's behalf and to enter them in the debtor's asset account;

(i) to sell assets held by the debtor in accordance with the present law;

(j) subject to confirmation by the delegated judge, to conclude compromises, discharge debts, discharge guarantors, and waive collateral;

(k) to inform the delegated judge of any issue that would require a decision by the latter; (l) to perform any other duties imposed by decision of the delegated judge.

B. In the procedure for coming to an arrangement with creditors (*concordat preventiv*), the debtor takes part in the procedure through their legal or agreed representatives.

The remit of the **administrator of an arrangement with creditors (*administrator concordatar*)** is:

(a) to draw up the report on the debtor's situation of financial difficulty, the list of claims and the list of claims that are pending trial;

(b) to draw up or to assist the debtor in drawing up the restructuring plan, as appropriate;

(c) to assist the debtor in negotiating the restructuring plan or, at the debtor's request, to negotiate the restructuring plan, and to take action in order to settle amicably any dispute arising between the debtor and the creditors or between creditors;

(d) to request the delegated judge, where appropriate, to verify the legality of the establishment of categories and sub-categories of claims;

(e) to convene, where appropriate, meetings of creditors holding affected claims and to draw up the minutes thereof;

(f) to supervise the fulfilment of the obligations taken on by the debtor in the restructuring plan;

(g) to draw up quarterly reports on their activities and those of the debtor, to enter those reports in the case file and to send them to the affected creditors;

(h) to monitor and, where appropriate, to assist the debtor in implementing the restructuring plan by any actions provided for therein or necessary for the implementation of the plan, such as: operational measures, realisation of assets, sale of the business or of a part thereof on a standalone basis;

(i) to apply to the court for the closure of the procedure for coming to an arrangement with creditors;

(j) to carry out any other duties referred to in this chapter provided for in the restructuring plan or established by the delegated judge. (Article 19 of Law No 85 /2014).

5 Under which conditions may set-offs be invoked?

The initiation of insolvency proceedings does not affect any creditor's right to invoke a set-off of their claim against a claim held by the debtor against that creditor if the requirements laid down by law for legal set-offs are met on the day when proceedings are initiated. The set-off may also be recorded by the court-appointed administrator or liquidator. The set-off also applies to reciprocal claims arising after the initiation of insolvency proceedings.

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

Ongoing contracts continue in force when the proceedings are initiated. Any clause in a contract providing for termination, deprivation of the benefit of the natural term of the contract, or early payability, on grounds of the initiation of insolvency proceedings, is null and void. The rule that ongoing contracts continue in force, and that clauses for termination or the bringing forward of obligations are null and void, is not applicable to qualified financial contracts or to bilateral netting transactions under a qualified financial contract or a bilateral netting agreement.

In order to maximise the value of the debtor's assets within a limitation period of three months from the initiation of the proceedings, the court-appointed administrator or liquidator may terminate any contract, any unexpired leases, and any other long-term contract as long as these contracts have not been performed in full or to a substantial extent by all the parties involved. When a contract is thus terminated the other party may file a claim for compensation against the debtor.

Where, within the first three months following the initiation of proceedings, a contractor files a notification requesting the court-appointed administrator or liquidator to terminate the contract, the administrator or liquidator must respond within 30 days of receipt, failing which the contract is deemed to have been terminated and the administrator or liquidator will no longer be able to require its performance.

The law also regulates the status of some particular contracts, such as those regarding the provision of utilities, leases, or master netting agreements.

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

A. All court and out-of-court actions, and any measures for the forced recovery of claims against the debtor's assets are automatically suspended from the initiation of insolvency proceedings. Their rights may be exercised only within the insolvency proceedings, by applying for the admission of their claims. The initiation of the proceedings suspends any limitation periods for bringing actions.

Appeals filed by the debtor against actions initiated by a creditor before the initiation of the proceedings, and lawsuits against co-debtors or third-party guarantors shall not be subject to suspension.

B. From the date of delivery of the decision to approve the restructuring plan, individual enforcement actions against the debtor for the recovery of related debts and the limitation period for the right to apply for the enforcement of their claims are automatically suspended.

Interest rates, penalties and any other expenses shall be dealt with in accordance with the approved restructuring plan.

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

All court and out-of-court actions, and any measures for the forced recovery of claims against the debtor's assets, are automatically suspended from the initiation of insolvency proceedings.

The following are not subject to suspension:

(a) appeals filed by the debtor against actions initiated by a creditor or creditors before the initiation of the proceedings, and civil lawsuits joined to criminal prosecutions (*acțiuni civile din procesele penale*) against the debtor;

(b) court actions filed against co-debtors and/or third-party guarantors;

(c) out-of-court proceedings pending before sports commissions within sports federations operating under The relevant laws No 69/2000 on physical education and sport (*Legea educației fizice și sportului nr. 69/2000*), as subsequently amended and supplemented, concerning the unilateral withdrawal of players from individual employment contracts or civil agreements and sporting penalties applicable to such situations, and any other disputes concerning the right of players to take part in competitions.

(d) court actions to determine the existence and/or the number of claims against the debtor arising after the date of initiation of proceedings. For such claims, during the observation and reorganisation period, a request for payment may be drawn up and sent with an acknowledgement of receipt. This request will be analysed by the court-appointed administrator within 15 days of receipt, in accordance with the provisions of Article 106(1), which will apply accordingly, without these claims being included in the list of claims.

Measures ordered by the court-appointed administrator are subject to appeal.

It is worth noting that this suspension of actions applies only to lawsuits involving claims against the debtor's assets, and not to those regarding non-patrimonial rights and obligations, which continue in the relevant court.

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

A meeting is held of all the insolvent debtor's creditors.

The creditors' meeting (*adunarea creditorilor*) will be convened and chaired by the court-appointed administrator or liquidator. Known creditors will be convened by the administrator or liquidator in the cases expressly provided for by law whenever required.

Creditors are convened by a notice published in the Bulletin of Insolvency Proceedings at least five days before the meeting which must contain the agenda of the meeting. Creditors may be represented at the meeting by agents holding a specific and authentic proxy or, for public budget creditors and other legal persons, a delegating act signed by the head of unit. Except where expressly prohibited by law, creditors are also able to vote by correspondence.

Except where the law requires a special majority, the meeting of creditors can act validly provided it is attended by the holders of claims accounting for at least 30% of the total value of claims with the right to vote in respect of the debtor's assets, and the decisions of the meeting are adopted by a favourable vote expressly cast by the majority, by value of claim, of the claim holders present with the right to vote. A vote subject to conditions is deemed to be a negative vote. Creditors who cast valid votes by correspondence are also deemed to be present.

After the first meeting has been convened, the delegated judge and then the creditors may appoint a committee, which is made up, depending on the number of creditors, of three or five creditors from among those with the right to vote, with preference claims, budgetary claims and unsecured claims in order of value. The creditors' committee (*comitetul creditorilor*) has the following remit:

(a) to review the debtor's situation and to issue recommendations to the creditors' meeting with regard to the continuation of the debtor's business and proposed reorganisation plans;

(b) to negotiate terms of appointment with the administrator or liquidator whom the creditors wish to see appointed;

(c) to read the reports prepared by the court-appointed administrator or liquidator, to review them and, where applicable, to file objections thereto;

(d) to prepare reports to be presented at the creditors' meeting in regard to the measures taken by the court-appointed administrator or liquidator and their effects, and to also propose alternative measures, where appropriate, giving reasons;

(e) to request the removal of the debtor's right to manage their affairs;

(f) to file legal actions for the annulment of certain fraudulent acts or transactions performed by the debtor to the detriment of creditors when such legal actions have not been brought by the court-appointed administrator or liquidator.

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

Depending on the debtor's specific situation and on whether or not the debtor has been deprived of their right to manage their affairs, the insolvency practitioner has the following duties.

A court-appointed administrator supervises the debtor's asset management operations. They conduct the debtor's business, in whole or in part, in the latter case observing the delegated judge's express specifications regarding the administrator's duties and regarding the conditions for the execution of payments from the debtor's asset account.

They recover claims, conclude compromises, draw up the inventory, and sell assets belonging to the debtor.

The debtor may use the assets only where they have kept their right to manage their affairs and within the limits of their current business; they are supervised and controlled by the court-appointed administrator.

After winding-up proceedings have commenced, a court-appointed liquidator manages the debtor's business, terminates contracts, recovers claims, sells the assets, concludes compromises, receives payments on the debtor's account, etc. In a winding up procedure, only the court-appointed liquidator may dispose of the debtor's assets.

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 creditors whose claims are dated prior to the initiation of proceedings, with the exception of employees, whose claims are recorded by the court-appointed administrator on the basis of the accounting records, are to submit an application for the admission of their claims within a deadline set in the order initiating the proceedings, and to enclose the necessary supporting documents. All claims submitted for admission and recorded at the registry of the court will be presumed to be valid and accurate if they are not challenged by the debtor, the court-appointed administrator or the creditors. The claims included on the list of claims are paid as part of the insolvency proceedings in the order of distribution laid down by law.

Claims arising after the initiation of proceedings, in the period of observation or in the course of judicial reorganisation proceedings, will be paid in accordance with the documents substantiating them and do not have to be included in the insolvency estate. This rule also applies to claims arising after the initiation of winding-up proceedings.

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

Except for employees, whose claims are recorded by the court-appointed administrator on the basis of the accounting records, all creditors whose claims are dated prior to the initiation of proceedings have to lodge an application for the admission of their claims within a deadline set in the order initiating the

proceedings. The application must include: the creditor's name, domicile or registered office, the amount due, the grounds of the claim, and details of any potential grounds for preferential ranking. The documents supporting the claim and any grounds for preferential ranking are to be attached to the application no later than the deadline set for the submission of the application itself.
An application for admission of a claim must be lodged even if the claim is not shown by an enforceable title. Claims that on the date of the initiation of proceedings are not yet due or that are subject to conditions will be admitted for inclusion in the insolvency estate.
Where an application is made for the admission of a claim that is being put forward by an injured party in a civil lawsuit joined to a criminal prosecution, the claim will be recorded, subject to suspension pending final settlement of the action in the injured party's favour.
Claims qualifying for preferential treatment are included on the final list up to the market value of the guarantee, which is established through a valuation ordered by the court-appointed administrator or liquidator and performed by a valuer (evaluator).
All claims will be subjected to the verification procedure, except for claims ascertained in enforceable judgments and enforceable arbitration awards; nor does the procedure cover public budget claims arising from an enforceable title that has not been challenged within the deadlines set under the specific laws.
The court-appointed administrator or liquidator prepares a preliminary list of claims, which can be challenged before the delegated judge by any interested party, debtor or creditor. Except where the initiation of proceedings has been notified in breach of the rules on summonses and notice of procedural acts, the holder of a claim arising prior to the initiation of the proceedings who fails to submit an application for admission of the claim by the set time-limit (the time-limit is indicated in the notice and is not more than 45 days from the initiation of the proceedings) will lose the right to be included on the list of creditors and will not acquire the position of creditor entitled to take part in the proceedings in respect of that claim. The creditor will not be entitled to enforce the claim against the debtor, or against any members or partners in a debtor legal entity who have unlimited liability, after the proceedings have been closed, unless the debtor is convicted of simple bankruptcy (*bancrută simplă*) or fraudulent bankruptcy (*bancrută frauduloasă*) or is held responsible for fraudulent payments or transfers. The loss of entitlement will be ascertained by the court-appointed administrator or liquidator, who will not enter the creditor in the list of creditors.

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

The funds obtained from the sale of assets and rights from the debtor's estate that are secured in favour of the creditor on a preferential basis will be distributed in the following order:
fees, stamp duties and any other expenditure arising out of the sale of the assets concerned, including expenses required for the conservation and administration of those assets, expenses incurred by the creditor under the forced recovery procedure, utility supplier claims that arise after the initiation of the procedure, and remuneration due to persons employed in the common interest of all creditors on the date of distribution, which will be borne on a pro rata basis in proportion to the value of all the debtor's assets;
claims of creditors enjoying preference that arise during the insolvency proceedings; these claims include capital, interest and other ancillaries, where applicable;
claims of creditors enjoying preference, including the entire capital, interest, and increases and penalties of any kind.
If the sums realised from the sale of these assets are insufficient for the full payment of the claims concerned, the creditors have an unsecured or public budget claim, as the case may be, for the difference, which will be ranked with the other claims in the appropriate category. If, after the payment of the sums referred to previously, a surplus remains, it will be deposited by the court-appointed liquidator in the account of the debtor's estate.
Claims in a winding up procedure are paid in the following order:
(1) fees, stamp duties and any other expenditure arising out of proceedings under the same title of the present law, including expenses required for the conservation and administration of the debtor's assets, for the continuation of business, and for the payment of the fees of the persons employed for the purposes of the proceedings;
(2) claims arising from financing granted during the proceedings;
(3) claims arising from financing granted in insolvency prevention proceedings and the practitioner's fees
(4) claims arising from employment relationships;
(5) claims arising from the continuation of the debtor's business after the initiation of proceedings, claims due to co-contractors and to third-party acquirers in good faith or sub-acquirers who return to the debtor's estate their assets or the value thereof;
(6) budgetary claims;
(7) claims for sums due by the debtor to third parties on the basis of maintenance obligations, allowances for minor children or the payment of regular sums as means of subsistence;
(8) claims for sums determined by the delegated judge to support the debtor and his or her family, if the debtor is a natural person;
(9) claims arising from bank loans, with the related expenses and interest, claims arising from supplies of goods, provision of services or other work, claims from rents, and claims related to leases, including bonds;
(10) other unsecured claims;
(11) subordinated claims, in the following order of preference:
(a) claims arising from the assets of third parties who have acquired goods from the debtor in bad faith, claims of sub-acquirers in bad faith after the admission of actions for annulment, and loans granted to a debtor that is a legal person by a partner or shareholder holding at least 10% of the share capital or of the voting rights at the general meeting or, where applicable, by a member of an economic interest grouping (*grup de interes economic*);
(b) benefits not distributed to members;
(c) claims arising from gratuitous acts.

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

If the procedure for coming to an arrangement with creditors is completed successfully on or before the date stipulated in the contract, as the case may be, the delegated judge will take a decision closing the proceedings. In that case, if the restructuring plan provided for reductions of claims, those reductions remain definitive. (Article 34 of Law No 85/2014).
Proceedings for reorganisation with continuation in business or for planned liquidation (*lichidare pe bază de plan*) will be closed by a judgment delivered on the basis of a report drawn up by the court-appointed administrator that finds that all the payment obligations undertaken in the confirmed plan have been met and that all claims currently due have been paid. If proceedings initiated with a view to reorganisation are then converted into winding-up proceedings, they will be closed in accordance with the rules on winding-up proceedings. From the date of confirmation of a plan for reorganisation under court supervision, and for the duration of the reorganisation, the debtor is discharged from the difference between the value of the liabilities they had before the confirmation of the plan and the value indicated in the plan.
Winding-up proceedings will be closed when the delegated judge has approved the final report, when all the funds and assets from the debtor's estate have been distributed and when any unclaimed funds have been deposited at the bank. After the closure of the proceedings, an order is made to remove the debtor from the registers where they were listed.

By virtue of the closure of the proceedings, the delegated judge, the court-appointed administrator or liquidator and all the persons who assisted them are discharged of any duties or responsibilities relating to the proceedings, the debtor and the debtor's estate, creditors, holders of preference rights, shareholders or partners.
By virtue of the closure of the winding-up proceedings, a debtor who is a natural person (engaging in economic activities) is discharged of their liabilities prior to the winding up, unless they have been convicted of fraudulent bankruptcy or of making fraudulent payments or transfers; in such situations, they will be discharged of liabilities only in so far as they have been met as part of the proceedings.

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

After the closure of insolvency proceedings of whatever kind, creditors cannot pursue the debtor for claims arising prior to the initiation of the insolvency proceedings.
Creditors may still proceed to recover the entire value of claims against co-debtors and the debtor's guarantors.

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

All the expenses arising out of legally established proceedings, including those relating to notice, invitations and communication of procedural documents by the court-appointed administrator or liquidator, will be borne from the debtor's estate (Article 39 of Law No 85/2014). If the debtor's financial resources are insufficient, a call will be made on the liquidation fund (*fondul de lichidare*).

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

The court-appointed administrator or liquidator may file actions before the delegated judge **for the annulment of fraudulent acts and transactions** performed by the debtor to the detriment of the creditors' rights in the two years prior to the initiation of the proceedings.
The following acts or transactions performed by the debtor can be annulled in order to return the transferred assets or the value of other benefits provided:
(a) acts of transfer without consideration performed in the two years prior to the initiation of the proceedings; sponsorships for humanitarian purposes are exempted herefrom;
(b) transactions where what is given by the debtor is clearly greater than what is received, performed in the six months prior to the initiation of the proceedings;
(c) acts performed in the two years prior to the initiation of the proceedings with the intention on all sides of preventing assets from being pursued by creditors, or of undermining their rights in any other way;
(d) acts of transfer of ownership to a creditor for the satisfaction of a prior debt or for that creditor's benefit, performed in the six months prior to the initiation of the proceedings, if the amount that the creditor could obtain in the event of the winding-up of the debtor is below the value of the act of transfer of ownership;
(e) the establishment of a right of preference with regard to an unsecured claim in the six months prior to the initiation of the proceedings;
(f) advance payment of debts that are made in the six months prior to the initiation of the proceedings, if the due date was to have been a date after the initiation of the proceedings;
(g) acts of transfer performed or obligations undertaken by the debtor in the two years prior to the initiation of proceedings with the intention of concealing or delaying the state of insolvency or committing fraud against a creditor.
The following acts or transactions can also be annulled, and the benefits recovered, if they were concluded in the two years prior to the initiation of proceedings with the persons in legal relations with the debtor:
(a) those concluded with a limited partner (*asociat comanditat*) or with a partner who holds at least 20% of the capital of the partnership or of the voting rights at the general meeting of partners, if the debtor is that limited partnership (*societate în comandită*) or an agricultural company (*societate agricolă*), a company in partnership form (*societate în nume colectiv*) or a private limited company (*societate cu răspundere limitată*);
(b) those concluded with a member or director, if the debtor is an economic interest grouping;
(c) those concluded with a shareholder holding at least 20% of the shares in the debtor or of the voting rights at the general meeting of shareholders where the debtor is a public limited company (*societate pe acțiuni*);
(d) those concluded with a director, a manager or a member of the debtor's supervisory bodies, where the debtor is a cooperative, a public limited company or an agricultural company;
(e) those concluded with any natural or legal person holding a position of control over the debtor or their business;
(f) those concluded with a co-owner or a with a party having shared ownership of a common asset;
(g) those concluded with the spouse, blood relatives or relatives by marriage, up to and including the fourth degree of kinship, of the natural persons listed under points (a)-(f).
An action for the annulment of fraudulent acts performed by the debtor to the detriment of creditors may be filed by the court-appointed administrator or liquidator within one year from the expiry of the time-limit set for the preparation of the first report by the court-appointed administrator or liquidator, but no later than 16 months from the initiation of the proceedings. If the action is admitted, the parties thereto will regain their former position and the obligations existing on the date of transfer will be reregistered.
The creditors' committee or a creditor holding more than 50% of the value of claims entered in the insolvency estate may file such an action before the delegated judge if the court-appointed administrator or liquidator fails to do so.
No action for annulment can be brought against a constitutive act (*act de constituire*) under property law or an act of transfer of ownership under property law if it is concluded by a debtor in the normal course of their day-to-day business. An application for the annulment of a constitutive act or of an act of transfer of ownership will be entered automatically in the appropriate public registers.
In regard to the above-mentioned acts and transactions, there is a rebuttable presumption of fraud to the detriment of creditors.
After the insolvency proceedings have been initiated, all acts, transactions and payments performed by the debtor after the initiation of proceedings are automatically null and void, with the exception of steps required for the conduct of current business, steps authorised by the delegated judge, and steps endorsed by the court-appointed administrator.

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Insolvency/bankruptcy - Slovenia

1 Who may insolvency proceedings be brought against?

Insolvency proceedings and proceedings for preventive restructuring are set out in the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (*Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju*) (hereinafter: ZFPPIPP).

I. INSOLVENCY PROCEEDINGS

1. Proceedings for financial restructuring - reorganisation

Compulsory settlement proceedings may be brought against:

- a legal person organised as a company or a cooperative, unless the law provides otherwise for a particular company or a cooperative when taking into account the activity it is engaged in;
- an entrepreneur; or
- any other legal person when so stipulated by the law.

Compulsory settlement proceedings also contain **special rules for compulsory settlement of a large, medium or small company**. These proceedings offer a wider selection of measures for financial restructuring of the debtor's obligations (for example, creditors' secured claims).

Simplified compulsory settlement proceedings are permitted only against a company which is regarded as a micro company according to the rules of the Companies Act (*Zakon o gospodarskih družbah*) or against an entrepreneur that meets the criteria for a micro or small company.

2. Bankruptcy proceedings

Bankruptcy proceedings against a legal entity may be brought against any legal entity unless provided otherwise by the law governing a particular legal form or a particular type of legal entity or a particular legal person. Bankruptcy proceedings against a disability company may be permitted only with the consent of the Slovenian government.

Personal bankruptcy may be brought against property of:

- an entrepreneur;
- an individual (doctor, notary, lawyer, farmer or other natural person who is not an entrepreneur and who pursues a particular activity as a profession); or
- a consumer.

Bankruptcy of succession may be brought against the property of an over-indebted testator — a deceased natural person.

II. PRE-INSOLVENCY PROCEEDINGS

Preventive restructuring proceedings

Preventive restructuring proceedings are permitted only against a capital company which is regarded as a large, medium or small company according to the rules of the Companies Act.

2 What are the conditions for opening insolvency proceedings?

Insolvency

The key requirement for opening insolvency proceedings is the existence of circumstances of insolvency. **Insolvency** is defined as a situation where:

- the debtor **has been insolvent for a lengthy period of time** because it was unable to pay all of its obligations due in that period; or
- the debtor has become **long-term insolvent** because the value of its property is less than the sum of its obligations **(over-indebtedness)**, or because the loss of the debtor capital company together with the loss brought forward in the current year exceeds half of the share capital, and the losses cannot be covered by profit brought forward or from reserves.

Preliminary and main insolvency proceedings

Insolvency proceedings include 'preliminary' and 'main' insolvency proceedings. Preliminary insolvency proceedings are opened by submitting a petition for opening the proceedings (petition for opening of insolvency proceedings). During preliminary insolvency proceedings, the court decides on the conditions for opening the proceedings. The main proceedings are opened by a Decision in which the court decides on the opening of insolvency proceedings (opening of insolvency proceedings).

Parties to preliminary and main insolvency proceedings

In preliminary proceedings, procedural acts may be performed by a petitioner of the proceedings, a debtor against whom the petition was lodged for opening the proceedings when the debtor is not the petitioner, and a creditor who can demonstrate that it is likely to have a claim against the debtor against whom the petition for opening the proceedings was lodged, provided that that creditor communicates its intention to participate in the preliminary proceedings.

In the main insolvency proceedings, procedural acts may be performed by any creditor who makes a claim in the proceedings against the insolvent debtor and by the insolvent debtor (in compulsory settlement, simplified compulsory settlement and personal bankruptcy).

Opening and notice of proceedings

On the same day that a court issues a Decision on opening proceedings, it publishes that Decision on the webpages used for publishing court documents, documents from participants and other information in insolvency proceedings. The court informs creditors about the opening of the proceedings by a notice, which must be published on the same day and at the same time as it publishes the Decision on opening proceedings. In this Decision, it publishes important information about the proceedings. The legal consequences of opening proceedings start on the day of publication of the notice of the opening of bankruptcy proceedings.

Petitioner of proceedings

A petition for opening **compulsory settlement proceedings** may be lodged only by an insolvent debtor or personally responsible shareholder of a debtor company. The petition for opening **compulsory settlement proceedings against a large, medium or small company** may also be lodged by creditors who jointly own at least 20 % of all financial claims. For example, these can be banks which are regarded as well-informed entities and have the required information, infrastructure and staff to put forth a plan for financial restructuring of the insolvent debtor.

Compulsory settlement proceedings take place with the intention to allow an insolvent debtor to become financially solvent in the short and long term by implementing suitable measures of financial restructuring. To allow the debtor to engage in business normally (and provide the liquidity required for current business operations) during the period of uncertainty while the compulsory settlement proceedings are ongoing, the forced disposal of the debtor's assets is not permitted. As a counterbalance to this 'advantage' and with the intention of preventing the debtor from abusing it, its business operations are restricted during the course of the proceedings to regular business only.

A petition for opening **simplified compulsory settlement proceedings** may be lodged only by an insolvent debtor. In these proceedings, only unsecured ordinary claims are subject to restructuring. A simplified compulsory settlement does not have any effect on priority or secured claims, nor on claims for taxes and contributions.

A petition for opening **bankruptcy proceedings** may be lodged by a debtor, a responsible shareholder of a debtor, a creditor, or the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia (*Javni jamstveni, preživninski in invalidski sklad Republike Slovenije*). A creditor must demonstrate the likelihood that its claim against the debtor will be successful and that the debtor is more than two months late in paying the claim. The Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia must demonstrate the likelihood that workers' claims exist against the debtor of the proposed bankruptcy proceedings and also that the debtor is more than two months late in paying these claims.

Preventive restructuring proceedings are conducted with the intention of allowing the debtor, who is likely to become insolvent within one year, to implement certain measures to restructure his financial obligations, and other measures of financial restructuring necessary to eliminate the causes of the possible

insolvency, on the basis of an agreement on financial restructuring. A petition for opening preventive restructuring proceedings may only be lodged by a debtor. The petition for opening preventive restructuring proceedings must be agreed upon by creditors who own at least a 30 % share of all the financial claims against the debtor. The debtor must attach to the petition a notarised copy of the creditors' statement consenting to the opening of the proceedings.

Webpages for publication of insolvency proceedings

For all insolvency proceedings, the following must be published on the webpages for public publications in insolvency proceedings:
information about individual compulsory settlement proceedings, bankruptcy proceedings, compulsory liquidation, simplified compulsory settlement, preventive restructuring, and bankruptcy of succession;
court decisions issued in proceedings (except for certain exceptions set out in law);
notices on the opening of proceedings, notices on hearing dates and other notices and calls for voting which are issued by a court according to the law;
records of hearings and sessions of the creditors' committee;
reports of administrators and of insolvent debtors in compulsory settlement proceedings;
lists of verified claims;
submissions of parties in proceedings and other court documents which must be published in accordance with ZFPPIPP; and
all public auction notices in bankruptcy proceedings and invitations to submit offers concerning the realisation of bankrupt estates.
Webpages for the publication of insolvency proceedings are managed by the Agency of the Republic of Slovenia for Public Legal Records and Related Services (*Agencija Republike Slovenije za javnopravne evidence in storitve*; hereinafter: AJPES). There is an incontestable statutory presumption that parties to insolvency proceedings and every other person become aware of court decisions, petitions of other parties to proceedings and other legal acts eight days after they are published. For this reason, the webpages are **public and free.**

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?

Compulsory settlement proceedings

After opening **compulsory settlement proceedings,** the debtor must retain its property. It may sell only property not needed for its business operations when the sale of such property is identified as a measure of financial restructuring in the financial restructuring plan. After opening compulsory settlement proceedings, the debtor may only take loans with the court's consent and they are capped at the total value of liquid assets required for financing regular business operations and for covering the costs of compulsory settlement proceedings.
Claims that arise in connection with the financing of the debtor's regular business operations in compulsory settlement proceedings and in preventive restructuring proceedings are paid in potential subsequent bankruptcy proceedings from the general distribution of the bankruptcy estate, before paying priority claims (namely the costs of the proceedings).

Bankruptcy proceedings

The bankruptcy estate of **a debtor who is a legal person** includes the property of the debtor in bankruptcy at the opening of proceedings, all the property obtained by realising and managing the bankruptcy estate and by contesting legal acts of the debtor in bankruptcy, and the property obtained by continuing business operations where the bankruptcy debtor continues business operations after the opening of bankruptcy proceedings in accordance with the ZFPPIPP. The bankruptcy estate also includes property obtained by lodging actions against personally responsible shareholders of the debtor in bankruptcy, except for assets which are urgently necessary for meeting basic needs.
The bankruptcy estate of **a debtor in personal bankruptcy** includes all the property which the debtor in bankruptcy obtains during the verification period, until the relief from obligations or until the closure of bankruptcy proceedings. In personal bankruptcy, the following are excluded from the bankruptcy estate:
- objects (objects for personal use (clothing, shoes, etc.), household items (furniture, fridge, stove, washing machine, etc.) which are urgently necessary for the debtor and the members of the debtor's household, objects urgently required for performing the debtor's work, awards and acknowledgements, a wedding ring, personal letters, handwritten material and other personal documents (pictures and photographs of family members etc.); and
- receivables (receivables for legal maintenance, receivables for compensation for bodily injury in accordance with disability insurance, receivables for financial social assistance, etc.).

Furthermore, the bankruptcy estate in a personal bankruptcy does not include the debtor's earnings needed to provide the minimum social income (the debtor retains at least 76 % of the minimum salary, and where the debtor supports a family member or another person the debtor must support by law, the amount prescribed per person that is supported).
In personal bankruptcy, the debtor is guaranteed the same minimum social income he would receive in a case of individual enforcement.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Competence and tasks of a court

The district court has competence to deal with insolvency proceedings. A single judge presides in insolvency proceedings. The Ljubljana Higher Court (*Višje sodišče v Ljubljani*) is territorially competent to decide appeals in all insolvency proceedings.

Appointing an administrator and his powers

An administrator exercises powers and performs tasks in insolvency proceedings, as set out by the law, in order to protect creditors' interests. An administrator is appointed in compulsory settlement proceedings and bankruptcy proceedings. An administrator is appointed by a court by a Decision on opening insolvency proceedings. In compulsory settlement proceedings against large, medium or small companies, the court appoints an administrator by a special Decision the day after receiving a petition for opening proceedings.
In **compulsory settlement proceedings**, an administrator supervises the business operations of the debtor. To this end, the insolvent debtor must provide all the information required for supervision and allow the inspection of its business records and documentation. In such proceedings, the legal capacity of the debtor is limited. After the opening of proceedings, the debtor may perform only regular (current) business related to its activities and to settling its obligations related to the business. After the opening of proceedings, the debtor may deal with its property only to the extent that is needed to conduct regular business and may not take loans or credits, give guarantees or sureties, or enter into a contract or perform any other act that would lead to unequal treatment of creditors or inhibit the implementation of the financial restructuring. After opening compulsory settlement proceedings, the debtor may, aside from regular contracts and subject to obtaining a court's consent, sell property that is not needed for its business if the sale of the property is specified as a financial restructuring measure in the financial restructuring plan. The debtor may take loans or credits capped at the total value of liquid assets required for financing regular business operations and for covering the costs of compulsory settlement proceedings. The court decides whether to give its consent on the basis of the opinion of the administrator or the creditors' committee.
Once **bankruptcy proceedings against a legal entity** have been opened, the powers of the debtor's representatives, a holder of procuration and other persons authorised to represent the debtor, as well as the powers of the management to manage the debtor's business terminate. The administrator acquires the powers to manage the business of the insolvent debtor during bankruptcy proceedings in accordance with the needs of the proceedings and to represent the debtor in:

procedural and other legal acts related to verifying claims, and to separation and exclusion rights;
procedural and other legal acts to contest legal acts of the insolvent debtor;
legal contracts and other acts required to realise the bankruptcy estate;
realising a waiver and other rights acquired by the insolvent debtor as a legal consequence of opening bankruptcy proceedings; and
other legal transactions which the insolvent debtor may perform under the law.
Once **personal bankruptcy proceedings** have been opened, the legal capacity of the debtor in bankruptcy is restricted by:
1. not being able to conclude contracts or perform other legal transactions or acts, which involve dealing with property included in the bankruptcy estate; and
2. not being able, without the consent of a court, to:
take loans or credit, or give guarantees;
open a bank account or another cash account; or
renounce succession or other proprietary rights.
A legal transaction or other legal act of a debtor in bankruptcy which is contrary to these rules does not have legal effect except where the other contracting party did not know and could not have known that personal bankruptcy proceedings were open against the debtor when concluding the legal transaction or performing the legal act, the subject of which was the disposition of the debtor's property included in the bankruptcy estate. As a rule, and evidence to the contrary is not permitted, the other contracting party is deemed to have known that personal bankruptcy proceedings were opened against the debtor, where the contract or any other legal transaction was concluded more than eight days after the publication of the notice of the opening of bankruptcy proceedings on the public webpages for publishing insolvency proceedings.
In **preventive restructuring proceedings,** an administrator is not involved. The debtor's legal capacity is not restricted in these proceedings. An administrator is also not involved in **simplified compulsory settlement proceedings**.

Licence for acting as administrator

The function of an administrator may be performed only by a person holding a valid licence from the minister responsible for legal affairs for performing the function of administrator in insolvency and compulsory liquidation proceedings.
The minister responsible for legal affairs will issue the licence for acting as an administrator to a person meeting the following conditions:
is a national of the Republic of Slovenia or an EU Member State, an EEA Member State or an OECD Member State and has a working knowledge of Slovenian;
has legal capacity and is in general good health;
has at least first-cycle higher education or comparable education obtained abroad that was nostrified, recognised or evaluated in accordance with the law on evaluating and recognising education, or has a licence for performing the tasks of an auditor or an authorised auditor;
has at least three years of working experience related to his or her professional education;
has an insurance policy covering his or her liability for damages of at least EUR 500 000 in a year;
has passed a professional examination to act as an administrator;
is a person worthy of public trust to act as an administrator;
has given a statement to the minister responsible for legal affairs that he/she will conscientiously and responsibly perform his/her role as an administrator, and that he/she will work towards an expeditious completion of the proceedings with the most favourable repayment terms possible to creditors in every insolvency proceeding in which he/she is appointed.

5 Under which conditions may set-offs be invoked?

Set-off of claims upon opening of compulsory settlement proceedings

Where, upon the opening of **compulsory settlement proceedings,** there is a claim of a creditor against an insolvent debtor and a counter claim of the insolvent debtor against that creditor, the claims are regarded as set off at the opening of the compulsory settlement proceedings. This rule also applies to non-monetary claims and claims not due for payment at the opening of the compulsory settlement proceedings. Opening compulsory settlement proceedings does not have any effect on secured and priority claims and exclusion rights. In insolvency proceedings against large, medium or small companies, secured claims may be subject to financial restructuring.

Set-off of claims upon opening of bankruptcy proceedings

Where, upon the opening of **bankruptcy proceedings,** there is a claim of a creditor against the debtor in bankruptcy and a counter claim of the debtor in bankruptcy against that creditor, the claims are regarded as set off at the opening of bankruptcy proceedings. This rule also applies to non-monetary claims and claims not due for payment at the opening of bankruptcy proceedings. The creditor does not notify his claim against the debtor in bankruptcy in the bankruptcy proceedings but must notify the administrator about the set-off within three months after the notice of the opening of bankruptcy proceedings is published. Where the creditor does not inform the administrator about the set-off, the creditor is liable to the debtor in bankruptcy for costs and other losses that the debtor in bankruptcy suffers because of the creditor's omission. Where the creditor's claim against the debtor in bankruptcy is conditional, there is a set-off if the creditor demands set-off and the court gives its consent to the set-off.
A claim against a bankruptcy creditor which arose before the opening of bankruptcy proceedings or which a new creditor acquired before the opening of bankruptcy proceedings on the basis of a cession from a previous creditor, cannot be set off by a counter claim of the debtor in bankruptcy against the new creditor if that claim arose before the opening of bankruptcy proceedings.
A claim against the bankruptcy creditor which arose before the opening of bankruptcy proceedings may not be set off by a counter claim of the debtor in bankruptcy against that creditor if that claim arose after the opening of bankruptcy proceedings.

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

Orders to perform a legal transaction or other legal act for a debtor terminate if the debtor had issued them before the opening of bankruptcy proceedings. After opening bankruptcy proceedings, a payment service provider may not make any payments from monetary assets of the insolvent debtor under a Decision on enforcement or compulsory recovery. Offers given by the debtor in bankruptcy before the opening of bankruptcy proceedings terminate, except where the addressee accepted the offer before the opening of bankruptcy proceedings.
An administrator may terminate rental and lease contracts upon the opening of bankruptcy proceedings where these contracts were concluded by the debtor in bankruptcy before the opening of bankruptcy proceedings by giving one month's notice, regardless of general statutory rules and the terms of the contract. Where the debtor in bankruptcy acts on his right to terminate, the notice period starts on the last day of the month in which the other contracting party received the statement of the debtor in bankruptcy on the termination, and expires on the last day of the following month. The other contracting party has the right to damages from the debtor in bankruptcy that arose from exercising the right to terminate, contrary to general rules. The claim for damages must be notified in the bankruptcy proceedings and is paid from the distributable estate according to the law on paying creditor claims.
The opening of bankruptcy proceedings does not have an effect on a settlement agreement or on a qualified financial contract to which the rules set out in the settlement agreement apply. Where, after settling mutual rights and obligations in accordance with the rules set out in the settlement agreement, a net

monetary claim of another contracting party arises against the debtor in bankruptcy, the other contracting party must notify the claim in the bankruptcy proceedings and the claim is paid from the distributable estate, in accordance with the rules of the law on paying creditor claims.

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

Impermissibility of enforcement and liens

After the **opening of insolvency proceedings** against an insolvent debtor, it is generally not permitted by law to issue a Decision for enforcement or for a lien, unless the law specifies otherwise.

After the **opening of preventive restructuring proceedings** against a debtor, it is not permitted to issue a Decision for enforcement or for a lien of a financial claim that is the subject of preventive restructuring.

Termination of opened proceedings for enforcement or a lien

Proceedings for enforcement or a lien that were opened against an insolvent debtor **before the opening of compulsory settlement proceedings** are terminated upon the opening of the latter proceedings, and may continue only on the basis of a Decision of the court conducting compulsory settlement proceedings which is stated by law to be the basis for continuing the proceedings for enforcement or a lien.

The opening of bankruptcy proceedings has the following legal consequences on proceedings for enforcement or a lien that were opened against an insolvent debtor before the start of the bankruptcy proceedings:

where, in the proceedings for enforcement or a lien on movable or immovable property, the creditor has not yet acquired the separation right before the opening of bankruptcy proceedings, the proceedings for enforcement or a lien are stayed upon the opening of bankruptcy proceedings;

where, in the proceedings for enforcement or a lien on movable or immovable property, the creditor has acquired the separation right before the opening of bankruptcy proceedings and if, the sale of property that is the subject of the separation right has not yet taken place before the opening of bankruptcy proceedings, the proceedings for enforcement or a lien are stayed upon the opening of bankruptcy proceedings;

where a creditor in proceedings for enforcement acquires a separation right before the opening of bankruptcy proceedings, and if before the opening of bankruptcy proceedings the sale of the property that is the subject of the separation right has taken place in the proceedings for enforcement, the opening of bankruptcy proceedings does not have an effect on the enforcement proceedings; and

proceedings for security by an interim or preliminary measure are stayed upon the opening of bankruptcy proceedings, and all actions performed in those proceedings are annulled.

Proceedings for enforcement or a lien which were initiated against the debtor before the **opening of preventive restructuring proceedings** for enforcement or for securing a financial claim, which is the subject of preventive restructuring, are terminated upon the start of preventive restructuring proceedings. The enforcement court decides on terminating proceedings for enforcement or a lien upon the debtor's petition.

Principle of consolidating bankruptcy proceedings

A creditor may notify his claim for performing an obligation that arose from the relationship with the debtor in bankruptcy until the opening of bankruptcy proceedings only in bankruptcy proceedings against that debtor and in accordance with the rules of the proceedings (rules on notifying and verifying claims, directions to litigation (lodging a lawsuit) concerning disputed claims, etc.)

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

Where a creditor had lodged a lawsuit for establishing a claim before the opening of bankruptcy proceedings, the litigation is stayed on the basis of the rules of the Civil Procedure Act (*Zakon o pravdnem postopku*). A creditor who had lodged a lawsuit before the opening of bankruptcy proceedings must notify his claim in the bankruptcy proceedings.

On the day a Decision on verifying claims is published, the grounds for which a lawsuit was stayed as a consequence of bankruptcy proceedings terminate. If a creditor's claim is recognised, its legal interest to pursue the lawsuit on that claim ends and the lawsuit proceedings are stayed. The creditor is paid an equal proportionate share to the other creditors whose unsecured ordinary claims were recognised in the bankruptcy proceedings.

If a creditor's claim in bankruptcy proceedings is contested by the administrator, the creditor must petition for the stayed lawsuit to continue within one month after the Decision on verifying claims is published. In that case, the creditor in the lawsuit need only seek to establish the existence of the claim. If a creditor's claim was contested by another creditor, the creditor must expand its lawsuit to include the creditor contesting the claim as a new defendant, within one month after the Decision on verifying claims is published. Where its claim was established in the lawsuit, the creditor is paid an equal proportionate share to the other creditors whose unsecured ordinary claims were recognised in the bankruptcy proceedings.

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

In the main insolvency proceedings, procedural acts may be performed by any creditor in the proceedings that seeks to establish its claim against the insolvent debtor. As a general rule, every creditor (as a party) has a right in insolvency proceedings to appeal against any court's Decision except where the law provides that an appeal against a particular Decision may be lodged only by certain parties. The appeal must be lodged within 15 days. The 15-day period for persons on whom a Decision must be served in accordance with the ZFPPIPP starts running from the day of serving the Decision; for other persons, the 15-day period starts running from the day the Decision is published.

In insolvency proceedings, a creditor may also perform procedural acts through the creditors' committee which, as a body of creditors for the account of all creditors that are parties to the proceedings, is authorised to perform procedural acts set out by law. A creditors' committee is established in compulsory settlement proceedings; in bankruptcy proceedings, it is established only where creditors request it.

Compulsory settlement proceedings

Creditors' committee

In compulsory settlement proceedings, the court establishes a creditors' committee, which, in order to exercise its rights and powers, has the right to inspect the debtor's business records (i.e. inspection of the operations and financial situation of the debtor) for the purpose of protecting the creditors' interest and to provide proposals and opinions required to protect creditors in the proceedings. In compulsory settlement proceedings, a creditors' committee may, for the purposes of financial restructuring of the insolvent debtor, adopt a decision under certain legislative conditions on increasing the share capital by cash injections or contributions in kind, which are the subject of creditors' claims against the insolvent debtor.

Legislative amendments at the end of 2013, made in order to facilitate efficient financial restructuring of large and medium companies, included special rules for compulsory settlement against such companies, which significantly strengthened the position of creditors. The rules of those proceedings are used for small companies as well, pursuant to the legislative amendment in 2016. For the correct performance of the administrator's tasks in compulsory settlement proceedings, wider experience and training is needed and, for this reason, when appointing an administrator, the rule on appointment according to the automatic appointment sequence order does not apply, and instead the court selects an administrator according to its own assessment. Where creditors themselves propose the opening of compulsory settlement proceedings against an insolvent debtor in accordance with the new legal provision, the court appoints the administrator that was suggested by the petitioners. According to the new system, the creditors' committee may also appoint a representative of the creditors. This allows the creditors' committee to more efficiently follow the business of the debtor company and the management processes in implementing measures of financial restructuring that come under its powers (for example, measures on business restructuring for optimising business costs

or for increasing the efficiency of the business). The powers of the creditors' committee were further expanded to include the possibility for the creditors' committee to amend the financial restructuring plan.

Legal remedies of an individual creditor in compulsory settlement proceedings

Every creditor or administrator may lodge an objection against the conduct of the compulsory settlement proceedings:
where the debtor is not insolvent and can pay all of its obligations in full and on time;
where the insolvent debtor can fulfil its obligations in a greater proportion or within a shorter period than offered by the proposal for compulsory settlement;
where it is unlikely that the realisation of the financial restructuring plan will allow the debtor to become solvent in the short or long term;
where it is unlikely that the creditors will, by confirming the compulsory settlement as proposed by the debtor, have more favourable conditions for the payment of their claims than if bankruptcy proceedings had been opened; or
where the insolvent debtor acts contrary to the rules restricting its business during compulsory settlement proceedings or is more than 15 days late in paying employees' salaries in the minimum amount or in paying taxes and contributions which the debtor must calculate and pay at the same time as paying employees' salaries.

Every creditor who is affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement where the insolvent debtor can pay the creditor's claim in full. A lawsuit to establish a voidable claim must be lodged within six months after the deadline expires for paying the claim, as set out in the confirmed compulsory settlement. Every creditor who is affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement where it was obtained fraudulently. A lawsuit to establish a voidable claim must be lodged within two years after the Decision on confirming compulsory settlement becomes final.

Bankruptcy proceedings

Creditors' committee

In bankruptcy proceedings, a creditors' committee has the right to inspect all the documentation held by the administrator in the bankruptcy proceedings and to inspect the documentation the administrator must keep concerning the proceedings. In bankruptcy proceedings, the creditors' committee may provide its:
opinion on completing necessary business operations of the debtor in bankruptcy;
consent on continuing business operations of the debtor in bankruptcy;
opinion on the administrator's proposed plan on the course of bankruptcy proceedings;
opinion on a Decision to sell property;
consent where a starting or reserve price is less than half the value of property, as assessed on the basis of liquidation value;
opinion regarding the administrator's assessment of the costs of the bankruptcy proceedings and its amendment; and
opinion on completing bankruptcy proceedings.

In **simplified compulsory settlement** and **preventive restructuring proceedings,** a creditors' committee is not formed.

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

In bankruptcy proceedings, an administrator is the legal representative of the debtor in bankruptcy and as such is authorised to manage the bankruptcy estate and to realise it.

The bankruptcy administrator **manages the bankruptcy estate,** in particular, by leasing the property of the debtor in bankruptcy and increasing the monetary assets of the debtor in bankruptcy. The administrator may also conclude an in-court or out-of-court settlement for which it needs the opinion of the creditors' committee and the consent of the court. After the opening of bankruptcy proceedings, property of the debtor in bankruptcy may be rented or leased only if, by doing so, the sale of property is not delayed. A rent or lease contract may be concluded only for a specific duration and for no longer than one year. The administrator may, with the consent of the court, set up a priority purchase right for the property that is the subject of the lease to the benefit of the lessee.

The administrator is bound by the law with regard to investing the monetary assets of the debtor in bankruptcy. Monetary assets may be invested only in debt securities issued by the Republic of Slovenia or another EU Member State, the Central European Bank, the Bank of Slovenia or a central bank of another EU Member State, or in debt securities (except subordinate securities) issued by a bank with a registered office in the Republic of Slovenia or a credit institution with a seat in another EU Member State. Bank cash deposits may be made only with a bank with a registered office in the Republic of Slovenia or with a credit institution with a registered office in another EU Member State.

Within the framework of **realisation**, the bankruptcy administrator may sell the property of the debtor in bankruptcy, seek its claims, and perform any other legal act for realising its proprietary rights. A contract for the sale of property of the debtor in bankruptcy may be concluded by way of a public auction or a binding call for offers. Only exceptionally may a contract be concluded on the basis of direct negotiations with a buyer. The sale starts with a (first) decision of a court on sale. The court issues a decision on sale upon a petition of the administrator and on the basis of an opinion of the creditors' committee. Where property on which a separate creditor has a priority repayment right (established lien) is sold, the opinion of that separate creditor is also required. In the decision in which the court decides for the first time on selling particular property, the court also decides on:
1. the method of sale;
2. the starting price at a public auction or reserve price in a binding call for offers; and
3. the amount of deposit.

Where a public auction or a call for offers for the sale of particular property on the basis of the first decision on sale is not successful, the court may in the subsequent decision on sale:
1. either:
- decide again that the sale is to take place by way of a public auction or a binding call for offers; and
- stipulate a lower starting or reserve price than in the first decision; or
2. decide to carry out a non-binding call for offers for sale on the basis of direct negotiations.

The court stipulates the reserve price in proceedings for accepting binding offers on the basis of the assessed value of the property. In the first decision on sale, the reserve price may not be lower than half the value of the property, as assessed on the basis of its liquidation value. In a subsequent decision on sale, the court may stipulate a starting or reserve price which is less than half the value of the property, as assessed on the basis of its liquidation value, when the creditors' committee or a separate creditor gives its consent.

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?

In bankruptcy proceedings, creditors must notify their claims against the debtor in bankruptcy which arose before the opening of bankruptcy proceedings, except those which do not need to be notified by law. A creditor who is responsible for the obligation of the debtor in bankruptcy as a jointly and severally liable co-debtor, guarantor or pledger must notify in the bankruptcy proceedings his potential claim of recourse which had not yet arisen before the opening of the bankruptcy proceedings under a deferred condition that the creditor would acquire the claim of recourse against the debtor in bankruptcy on the basis of the payment of the claim to be made after the opening of the bankruptcy proceedings. Where other jointly and severally liable co-debtors or guarantors are also responsible for the performance of the creditor's claim, in addition to the debtor in bankruptcy, the creditor may notify and seek to establish the full

amount of the claim in the bankruptcy proceedings until it is fully paid under a resolutory condition, which is realised when the creditor's claim is paid by another jointly and severally liable co-debtor or guarantor. Where the creditor misses the deadline for notification, its claim against the debtor in bankruptcy ceases and the court dismisses the late notification of the claim.
In bankruptcy proceedings, **it is not necessary to notify priority claims** for the payment of salaries and salary compensation of employees whose work becomes unnecessary because of the opening of bankruptcy proceedings, for the period from the opening of bankruptcy proceedings until the notice period ends, and severance pay of workers whose employment contracts were terminated by the administrator because their work became unnecessary because of the opening of the bankruptcy proceedings or during those proceedings. Certain claims, relating to calculation and payment of taxes, are also not notified.
Where a **claim is secured by a separation right**, the creditor must notify this secured claim in the bankruptcy proceedings by also notifying the separation right. If, according to the situation at the opening of bankruptcy proceedings, an ownership right of the debtor in bankruptcy is registered on real estate and that ownership right is restricted by a registered mortgage or maximum mortgage whose entry was in effect from before the opening of the bankruptcy proceedings, it is considered that the mortgage or the maximum mortgage and the claim thereunder are registered in the bankruptcy proceedings on time.
Creditors must notify their **exclusion rights** which arose before the start of bankruptcy proceedings within three months after the notice on the opening of bankruptcy proceedings was published. Where a creditor misses the deadline for notifying exclusion rights, the exclusion right does not terminate. If the administrator sells the property which is the subject of an unnotified exclusion right, the creditor holding the exclusion right loses the exclusion right but may request a payment of money obtained from the sale of that property, minus the costs incurred in the sale. The creditor holding the exclusion right does not have the right to demand recovery of damages. The creditor loses the exclusive right and the right to the payment of money if it does not notify the right until the plan on the first general distribution is published.
The obligations of the debtor in bankruptcy that arise after the opening of bankruptcy proceedings (with certain exceptions) are considered **costs of proceedings**. They are separated into:
- current costs (for example, salaries and other compensation to parties performing services necessary for the bankruptcy proceedings, including taxes and contributions to be calculated and paid by the debtor together with those payments, costs of the administrator; costs for electricity, water, heating, telephone and other costs related to the use of the business premises for bankruptcy proceedings, insurance premiums for insuring the property in the bankruptcy estate, costs of publications, legal costs of the debtor in bankruptcy to contest claims, costs for accounting, administrative and other services needed in bankruptcy proceedings, etc.); and
- occasional costs (payment of creditors' claims that arose during compulsory settlement proceedings, performance of obligations on the basis of mutually defaulted bilateral contracts, performance of obligations to complete urgent legal transactions and for continuing the business, costs for evaluating property and other acts concerning the sale, etc.).

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

By notifying a claim, the creditor obtains the right to perform procedural acts in the main insolvency proceedings. Claims must be notified within the prescribed deadline. Only claims that arose before the opening of insolvency proceedings are notified.
In **compulsory settlement proceedings,** notification and verification of claims take place especially to assess the procedural legitimacy of a creditor to vote on a compulsory settlement. Claims must be submitted within 30 days after the day on which the notice of the opening of proceedings was published on the webpages of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES). Failure to notify or late notification do not result in the creditor losing the claim itself, but do result in the loss of its voting right.
In **bankruptcy proceedings**, the notification and verification of claims is the basis upon which the distribution of the bankruptcy estate is determined. In such proceedings, the creditors must notify their claims within three months from the day on which the notice of the opening of bankruptcy proceedings was published on the webpages of AJPES.
In **personal bankruptcy**, the creditor does not lose the claim if it was notified after the deadline, but the administrator places it on the list of additional claims.
A creditor against whom a lawsuit contesting legal acts of the debtor in bankruptcy was lodged must, within one month after the day the lawsuit was served, notify in the bankruptcy proceedings its claim as a conditional claim which will arise if the lawsuit is granted by a final decision. A creditor must submit its claim for recovery of damages because of the administrator's termination of a lease contract or a bilaterally defaulted contract, within one month after receiving a statement of the debtor in bankruptcy exercising its termination or withdrawal rights.

Content of a claim

A notification of a claim in insolvency proceedings must contain:
1. the amount to be recognised as a claim in the proceedings; and
2. a description of the facts from which the eligibility of the claim arises and evidence thereof, including submitted documentation.

A notification of a claim in bankruptcy proceedings must also contain information on the bank account to which payment of the claim is to be made. Where the creditor initiated a lawsuit or other proceedings before the opening of bankruptcy proceedings, it must also include information about the court or other competent authority before which proceedings are taking place, and the reference number of the case.
A request for verifying a claim must contain:
1. the amount of the principal of the claim;
2. where the creditor in insolvency proceedings seeks interest in addition to the principal: the capitalised amount of any interest calculated for the period from maturity until the opening of insolvency proceedings; in the case of priority claims of the administrator: the calculated capitalised amount of interest;
3. where the creditor in insolvency proceedings, in addition to the principal, seeks expenses incurred by enforcing the claim in court or other proceedings initiated before the opening of insolvency proceedings: the amount of these costs;
4. where the creditor seeks to establish that the claim is a priority claim: an express petition that the claim be regarded as a priority claim upon distribution; and
5. where the creditor seeks to establish that the claim is a conditional claim: an express description of circumstances the occurrence of which means the realisation of a deferred or resolutory condition to which the claim relates.

In insolvency proceedings, a creditor may submit multiple claims by a single application.

Procedure for verification of claims

The procedure for verification of claims has three phases:
1. Statement of the administrator on submitted claims

The administrator makes a statement on recognising or contesting claims by preparing a *basic list of verified claims (osnovni seznam preizkušenih terjatev).* In the list, for each claim the administrator states whether it is recognised or contested. The court publishes the list on webpages used for publications in insolvency proceedings. Creditors may object to any errors about the notified claims on the basic list within 15 days after its publication by lodging an *objection to the basic list (ugovor proti osnovnem seznamu).* Where the creditor's objection is justified, the administrator must issue a correction of the basic list.

2. Statement of creditor on notified claims of other creditors

Every creditor who has notified his claim in the proceedings on time may object to claims of other creditors by lodging an *objection contesting a claim (ugovor o prerekanju terjatve).* The creditor must lodge the objection contesting a claim in compulsory settlement proceedings within 15 days and in bankruptcy proceedings within one month after the publication of the basic list of verified claims. In personal bankruptcy proceedings and compulsory settlement proceedings, such an objection may be lodged also by the insolvent debtor as a party to the proceedings. The administrator enters statements of creditors and of the debtor on contested claims in the *supplemented list of verified claims (dopolnjeni seznam preizkušenih terjatev).* Any errors for failing to address an objection lodged are claimed in an objection to the supplemented list.

3. Court's Decision on verifying claims

The court decides on verifying claims by a *decision on verifying claims (sklep o preizkusu terjatev). On the basis of this decision, the administrator prepares a final list of verified claims (končni seznam preizkušenih terjatev), which the court publishes together with the Decision on verifying claims.*

In the decision on verifying claims, the court decides on objections, on verified and contested claims and on claims likely to be demonstrated and on who must seek action in other proceedings (i.e. lawsuits) to establish their claim. The deadline for submitting the lawsuit is one month.

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

The bankruptcy estate is the property of the debtor in bankruptcy, which is realised to cover the expenses of the proceedings and to pay creditors' claims. The law differentiates between 'bankruptcy estate' and 'special bankruptcy estate'. Special bankruptcy estate is property which is the subject of a separation right or monetary assets obtained by realising that property. For all property that is the subject of a separation right, it is necessary to establish a separate bankruptcy estate and to manage this property separately from the property that is part of the general bankruptcy estate and property belonging to other special bankruptcy estates.

The realised part of a bankruptcy estate is a distributable estate and is intended for paying creditors' claims. The general distributable estate is the monetary assets generated by realising the general bankruptcy estate, minus the costs of bankruptcy proceedings. The special distributable estate is the monetary assets generated by realising the special bankruptcy estate, minus the costs of that realisation.

Regarding priority payment in bankruptcy proceedings, creditors' claims that arose before the opening of the proceedings are classified as follows:
secured claims, the payment of which is secured by a separation right that includes the right to priority payment of the claim from specific property; and
unsecured claims, among which priority claims are paid first, then ordinary claims, followed by subordinate claims and finally corporate rights.

Secured claims are claims the payment of which is secured by a separation right. A separation right is any right that includes the right to a priority payment of the claim from specific property. The most common separation right is a lien. In bankruptcy proceedings, secured claims are paid as a priority from the money obtained by selling the property which was the subject of the separation right.

Unsecured claims are claims that are not secured by a separation right. These claims are subordinate to the repayment of secured claims in terms of payment from the property that was the subject of the separation right. Payments from the remaining property are paid in the order of (1) priority claims, (2) ordinary claims and (3) any subordinate claims.

Priority claims are those (unsecured) claims which, by law, must be paid as a priority, before the payment of ordinary (unsecured) claims (for example, salaries and salary compensation for the last six months before the opening of insolvency proceedings, severance pay to workers, unpaid contributions, etc.). Where bankruptcy proceedings start because compulsory settlement proceedings were not successful, claims that arose during the compulsory settlement proceedings have absolute priority and are paid before the payment of priority claims;

ordinary claims are unsecured claims that are neither priority nor subordinate claims;

subordinate claims are unsecured claims which are paid only after paying all unsecured claims against the debtor on the basis of a legal relationship between the creditor and the debtor if the debtor becomes insolvent. In a compulsory settlement, subordinate claims may be converted into an ownership share. If they are not transferred as a contribution in kind, a confirmed compulsory settlement has the effect of terminating them.

Corporate rights (shares or business shares) do not have the characteristics (legal nature) of an obligational right, and give shareholders or stockholders a right to a proportional part of the remainder of the bankruptcy estate.

Before payments are made to creditors, the amount needed for paying the costs of the bankruptcy proceedings is excluded from the bankruptcy estate (distributable estate). Creditors are paid in the following order: separation creditors, who have their claim secured by a separation right (for example, a mortgage), are the first to be paid from the property that was the subject of the security (special distributable estate). Creditors of claims under contracts or other legal transactions that were concluded by the debtor in bankruptcy in the period from the opening of compulsory settlement proceedings until the opening of bankruptcy proceedings, in accordance with the rules on restricting business in compulsory settlement proceedings set out in the law, are paid first from the general distributable estate. Then creditors with privileged claims (workers) are paid, and finally other creditors - creditors of unsecured ordinary claims and creditors of subordinate claims. Any remainder from realised property is distributed among the shareholders.

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

Compulsory settlement proceedings

A compulsory settlement agreed to by a creditors' vote must also be confirmed by a court. In a decision on confirming compulsory settlement, the court:
1. decides whether or not to confirm compulsory settlement;
2. establishes the content of the confirmed settlement by stating:
- the percentage of payment of the creditors' claims;
- deadlines for their payment; and
- the interest rate on creditors' claims in the period from the opening of compulsory settlement proceedings until the end of the deadline for their payment;
3. decides which claims have been verified in the compulsory settlement proceedings; and
4. orders the debtor to pay creditors' claims, as verified in compulsory settlement proceedings, in the proportions, within the deadlines and at the interest rates set out in the confirmed compulsory settlement.

The absolute priority rule applies in the proceedings. The implementation of financial restructuring of the debtor's business in compulsory settlement proceedings means that:
shareholders of the debtor may retain only that part of the share capital of the debtor that corresponds to the remainder of the debtor's property that they would receive if bankruptcy proceedings were opened against the debtor;
creditors must be given more favourable conditions for the payment of their claims than if bankruptcy proceedings had been initiated against the debtor, taking into account the order of priority and other rules for paying priority, ordinary and subordinate claims and secured claims in bankruptcy proceedings; and
the operations of the debtor's business or the viable part of it continue.

Financial restructuring is carried out by the debtor asking creditors to agree to have their ordinary claims reduced or their payment deferred. The debtor must offer all creditors an equal percentage of payment of their ordinary claims, equal deadlines for their payment and the same interest rate from the opening of compulsory settlement proceedings until the expiry of the deadline for their payment. Where the debtor is a capital company, the debtor may ask the creditor to choose either:

to agree to a reduction and a deferral of the due date of its ordinary claims; or

that the claims be transferred to the debtor as a contribution in kind on the basis of a share capital increase of the debtor (*debt to equity swap*).

A compulsory settlement does not affect priority claims or excluded rights. Subordinate claims terminate. Secured claims may only be restructured voluntarily in a compulsory settlement. In **compulsory settlement proceedings concerning large, medium or small companies**, secured claims may be restructured by deferring maturity or reducing the interest rate in the sense that a decision of a 75 % majority also applies to those creditors holding a separation right who did not vote for the compulsory settlement. In these proceedings, an exclusion of a viable part of the business of the debtor for another company (*spin-off*) is possible as a measure of financial restructuring. It is also permitted to restructure separation rights into a joint separation right (an 85 % majority is required).

Bankruptcy proceedings against legal person

Bankruptcy proceedings are conducted with the intention of realising the bankruptcy estate and paying the creditors. As a general rule, a contract for the sale of property of the debtor in bankruptcy may be concluded on the basis of a public auction or a binding call for offers. A public auction may be organised by increasing the starting price or by reducing the starting price. In bankruptcy proceedings, the business or an activity of the company may be retained by selling the company at a public auction as a business unit or by selling its viable parts (*sale of a business as a going concern*).

Before payments are made to creditors, the amount needed to pay the costs of the bankruptcy proceedings is excluded from the bankruptcy estate. Creditors are paid in the following order: separation creditors whose claim was secured by a separation right (for example, a mortgage) are paid first from the property that was the subject of the security; then creditors of claims under contracts or other legal transactions that were concluded by the debtor in bankruptcy in the period from the opening of the compulsory settlement proceedings until the opening of bankruptcy proceedings are paid, in accordance with the rules on restricting business in compulsory settlement proceedings as set out by the law; then creditors with privileged claims (workers) are paid, and then other creditors — creditors of unsecured ordinary claims and creditors of subordinate claims. Any remainder from the realised property is distributed among the shareholders.

Personal bankruptcy

Just as in bankruptcy proceedings related to legal entities, personal bankruptcy proceedings are conducted for proportional and simultaneous payment of all creditor claims. Creditors are therefore paid from the debtor’s property proportionally and at the same time. The bankruptcy estate includes all the property of the over-indebted person at the opening of bankruptcy proceedings, unless it is excluded from enforcement according to the provisions of the Civil Enforcement and Security Act (*Zakon o izvršbi in zavarovanju*). Given that a natural person, unlike a legal person, does not cease to exist at the end of bankruptcy proceedings, claims of creditors that were not paid in bankruptcy proceedings do not terminate. As opposed to creditors' claims in bankruptcy proceedings of a legal entity, the execution of claims in personal bankruptcy proceedings does not terminate upon the closure of bankruptcy proceedings. A decision on the closure of personal bankruptcy proceedings which includes a list of unpaid recognised claims is a means for unpaid creditors to seek enforcement of these claims.

To be relieved of its obligations, the debtor in bankruptcy is given an opportunity to lodge a petition before the decision on the closure of personal bankruptcy proceedings is issued, asking for relief from his obligations that arose before the opening of the personal bankruptcy proceedings which will not be paid pursuant to those proceedings. Where the debtor in bankruptcy lodges a petition for relief from obligations and where the proceedings for relief from obligations after the completed verification period are successfully resolved for him, the part of his obligations that otherwise could be enforced on the basis of a decision on the closure of bankruptcy proceedings would be waived, and consequently the right of creditors to enforce it in court would terminate.

Even where the relief from obligations is favourable for the debtor, the relief does not affect the following types of debtor obligations:

1. priority worker rights;
2. claims against the debtor in bankruptcy based on legal maintenance, compensation for damages arising from a reduction of basic activities or reduced or lost ability to work, and compensation for lost maintenance because of death of the person who was providing it;
3. claims for monetary penalties or recovery of pecuniary advantage obtained by a criminal act pronounced in criminal proceedings;
4. claims under a conditional sentence that is conditional on the return of pecuniary advantage obtained from a criminal offence or on redress for damages caused by a criminal offence;
5. claims for fines or recovery of pecuniary advantage obtained from a minor offence pronounced in minor offence proceedings;
6. claims for the recovery of unlawfully obtained property; and
7. claims for the provision of redress for damages caused intentionally or through gross negligence.

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

Compulsory settlement proceedings are closed by a final decision of the court confirming compulsory settlement.

Every creditor whose claim is affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement where the insolvent debtor can pay the ordinary claims of such creditors in large part or in full. A lawsuit seeking a voidable claim must be lodged within six months after the expiry of the deadline for paying the claim, as set out in the confirmed compulsory settlement.

Every creditor affected by a confirmed compulsory settlement may ask the court to annul the confirmed compulsory settlement when it was obtained fraudulently.

A lawsuit for establishing a voidable claim must be lodged within two years after a Decision on confirming compulsory settlement has become final.

The court that issued the decision confirming compulsory settlement is competent to decide on the lawsuit.

In a decision in which a court annuls the confirmed compulsory settlement, the court may order the debtor to pay any unpaid part of claims which was affected by the confirmed compulsory settlement, within a period stipulated by the court, which cannot be longer than one year after the decision becomes final.

Closure of bankruptcy proceedings against a legal person

Bankruptcy proceedings against a legal person are closed by a decision on the closure of bankruptcy proceedings. The court issues this Decision on the basis of the administrator’s final report, which is prepared after the administrator has completed all acts set out by the law and on the basis of the opinion of the creditors' committee. The administrator must submit the final report to the court within one month after completing final distribution.

Where property belonging to the debtor in bankruptcy is found after a court has issued a decision on the closure of bankruptcy proceedings, then bankruptcy proceedings against the debtor may be opened with respect to the property found later, at the request of a creditor who was entitled to perform procedural acts in the bankruptcy proceedings against the debtor and whose entitlement to participate was not terminated before the end of bankruptcy proceedings, or at the request of a shareholder of the debtor in bankruptcy.

Closure of personal bankruptcy

Personal bankruptcy is closed by a decision on closure of bankruptcy proceedings.

If **relief from obligations was granted** to a debtor in personal bankruptcy, every creditor whose claim is affected by the final decision on relief from obligations may ask the court to annul the relief from obligations that was the subject of the Decision, when the debtor obtained the decision on relief from obligations by hiding or falsely presenting information about his property or through some other fraud. A lawsuit must be lodged within three years after the decision on relief from obligations becomes final (Article 411 of ZFPPIPP). Creditors who — after the decision on relief from obligations was made final — find property of the debtor which the debtor possessed before the relief from obligations was granted (and hid) may also seek annulment of the relief from obligations by requesting the opening of bankruptcy proceedings with respect to such property. In this case, the lawsuit for annulling the relief from obligations does not have to be brought within the three-year deadline.

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

Every creditor must bear its own costs for participating in **insolvency proceedings**.

In **compulsory settlement proceedings that were opened on the debtor's petition**, the costs of the proceedings and any other expenses are borne by the debtor.

In **compulsory settlement proceedings against large, medium or small companies that were opened on a petition from creditors**, the initial costs of the proceedings are paid by the petitioner of the proceedings. In these proceedings, the petitioner also bears the costs of the administrator's fees. The debtor against whom proceedings are brought bears the costs incurred for the following payments:

- under contracts concluded with qualified legal and financial advisers concerning legal and financial services that are needed to prepare the report on the financial situation and operations of the debtor, the financial restructuring plan and other documents that must be submitted as part of the proposal for compulsory settlement;
- under a contract with an auditor on auditing the report on the financial situation and operations of the debtor; and
- under a contract with an authorised valuer to review the financial restructuring plan.

In **bankruptcy proceedings,** the costs of the proceedings and expenses during the proceedings are charged to the bankruptcy estate before claims are paid from the distributable estate. Where a petition to open bankruptcy proceedings is lodged by a creditor, the creditor must make a deposit to cover the initial costs of the bankruptcy proceedings, while retaining the right to recover the advance paid in accordance with the rules on paying the costs of bankruptcy proceedings.

In **preventive restructuring proceedings**, the debtor must repay its proportionate share of the costs of the creditors who participated in the proceedings which, according to generally established business practice, are usually covered by the debtor. The debtor and creditors agree on the recovery of these costs in the agreement on financial restructuring.

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

Conditions for voidability

Creditors and the bankruptcy administrator have the right to contest a legal act of the debtor. A lawsuit or an objection is lodged against the person for whose benefit the voidable act was performed.

Any legal acts can be contested (including omissions) that result in unequal or reduced payment of bankruptcy creditors or in placing a particular creditor in a more favourable position (giving advantages to creditors, referred to as the objective element of voidability). When contesting, the applicant must prove that the party for whose benefit the voidable act was performed knew, or should have known, about the debtor's poor financial situation (the subjective element of voidability). The law provides for statutory presumptions when it deems that this condition is satisfied and cases where it is not possible to contest legal acts. The law also sets out the content of the application and the method of seeking voidability in detail.

Period in which voidable acts may be committed

Legal acts that may be contested in bankruptcy proceedings are those that were committed in the period from the last year before the submission of a petition to launch bankruptcy proceedings until the opening of bankruptcy proceedings. An unpaid legal act (or legal acts of disproportionately low counter value) can be contested when committed in the period starting 36 months before the submission of the request to launch bankruptcy proceedings and ending upon the opening of bankruptcy proceedings. A lawsuit for voidability must be lodged within 12 months after a decision on opening bankruptcy proceedings becomes final.

Which acts cannot be contested

It is not possible to contest legal acts performed by the debtor in bankruptcy during compulsory settlement proceedings, in accordance with legal rules applicable for conducting the debtor's business in the proceedings; legal acts performed by the debtor in bankruptcy to pay creditor claims in the proportions, within the deadlines and at the interest rates set out in a confirmed compulsory settlement; and payments for bills of exchange or cheques if the other party had to receive a payment in order for the debtor in bankruptcy not to lose the right of recovery against another person obligated under the bill of exchange or cheque.

Legal acts performed by the debtor to pay creditor claims or to perform other obligations in accordance with a confirmed agreement on financial restructuring cannot be contested either.

Special features in personal bankruptcy

The period of voidability for unpaid legal acts and for legal acts performed by the debtor in bankruptcy for the benefit of a closely associated person is five years in personal bankruptcy. This rule includes contracts with closely associated natural persons as well as legal persons who are associated with the debtor in bankruptcy or closely associated natural persons. These are legal persons in which a debtor in bankruptcy or the persons with whom the debtor is closely associated own individually or together at least a 25 % share of subscribed capital, or a have a 25 % share of voting rights, or the right to appoint and recall persons authorised to represent the legal person, or these persons are authorised to represent the legal person or for the benefit of companies associated with them.

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Insolvency/bankruptcy - Slovakia

1 Who may insolvency proceedings be brought against?

In Slovakia, all the different types of insolvency proceedings may be brought against the debtor.

2 What are the conditions for opening insolvency proceedings?

Conditions for opening the individual types of insolvency proceedings:

Conditions for **declaring bankruptcy or receivership**:

Bankruptcy and receivership proceedings ('bankruptcy proceedings') are divided into two parts. The first part is initiated by filing a bankruptcy petition and continues until a bankruptcy order is made. The second part begins when a bankruptcy order is made and continues until the closure of bankruptcy proceedings.
The conditions for the first part are that there is a person who is eligible to file a petition for bankruptcy proceedings to begin (if proceedings are initiated by a petition), on the basis of which it is reasonable to assume that the debtor is insolvent, and that an advance payment is made to the court.
The conditions for the second part (the making of a bankruptcy order) are that there are multiple creditors, that the debtor has excessive debt or is cash-flow insolvent, and that there are sufficient assets to cover the costs of the bankruptcy proceedings.
The person eligible to file a petition: proceedings may be commenced with or without a petition. A bankruptcy petition may be filed by the debtor, a creditor, a liquidator or another person specified by the legislation. Bankruptcy proceedings are primarily initiated without a petition if reorganisation has been unsuccessful, in which case the court decides to commence bankruptcy proceedings and declare bankruptcy, both decisions in a single order.
The petition must satisfy the general and certain particular formalities, the latter depending on who files the petition. If this is a creditor, the petition must include evidence of the debtor's cash-flow insolvency. If the petition is filed by the debtor (cash-flow insolvency or excessive debt is assumed), it must include a list of the debtor's assets, liabilities, related parties and the most recent financial statements, if available.
The petitioner must remit the advance payment to the court's bank account before filing the petition.
Insolvency means that the debtor has excessive debt or is cash-flow insolvent. A debtor has excessive debt if the debtor is obliged to keep accounts in accordance with the applicable legislation (Act No 431/2002 on accountancy), has more than one creditor, and the value of the debtor's liabilities is greater than the value of the debtor's assets. A legal person is cash-flow insolvent if it is more than 30 days overdue with the payment of two or more financial liabilities to more than one creditor. A natural person is cash-flow insolvent if he or she is unable to pay at least one financial liability 180 days after payment was due.
Sufficient assets – if it is questionable whether there are sufficient assets to cover the costs of the bankruptcy proceedings, the court appoints an interim trustee or an interim receiver ('practitioner' or 'insolvency practitioner') to review the matter.
Conditions for **initiating reorganisation**:
Like bankruptcy proceedings, reorganisation is divided into two parts. In the first part (when reorganisation is initiated) the court examines whether the conditions for reorganisation are satisfied. This begins when an eligible person (the debtor or a creditor) files a petition together with a recommendation by the insolvency practitioner that the debtor be reorganised. The second part begins when reorganisation is permitted, and the debtor, supervised by the insolvency practitioner and the court and cooperating with the creditors, draws up, discusses, and has approved a reorganisation plan and has it confirmed by the court.

- The debtor may file a petition for reorganisation if the debtor asked for the insolvency practitioner's opinion and the latter, in an opinion that may not be more than 30 days old, recommended the reorganisation of the debtor.
- A creditor may file a petition for reorganisation if the creditor asked for the insolvency practitioner's opinion and the latter, in an opinion that may not be more than 30 days old, recommended the reorganisation of the debtor and the debtor has consented to the filing of the petition.

Conditions for **initiating debt relief**:
Conditions for initiating debt relief: the debtor is a natural person (an entrepreneur or a consumer), bankruptcy proceedings have been closed, the debtor has filed a petition and the debtor has satisfied his or her obligations during the bankruptcy proceedings. However, the debtor does not have the right to seek the discharge of debts if bankruptcy proceedings were closed because the debtor's assets were insufficient even for claims against the estate. Other conditions are that the debtor must be cash-flow insolvent and must have declared cash-flow insolvency, ten years must have elapsed since the most recent debt relief, there must be distraint (i.e. taking control of goods) or analogous proceedings against the debtor, and the debtor may not be serving a custodial sentence.

- The petition may be filed together with a petition for bankruptcy, or during bankruptcy proceedings until their closure. It is filed by the debtor, who must, however, be represented by the Centre for Legal Aid (*Centrum právnej pomoci*), and the petition may only be filed electronically.
- The debtor is relieved from debt when the court makes a bankruptcy order (debt relief through bankruptcy) or orders a payment schedule (debt relief through a payment schedule). No other rulings are required for debt relief.
- Discharge of obligations: the court permits debt relief if it finds that the debtor has discharged the obligations set out by the applicable law during bankruptcy proceedings; otherwise it rejects the petition. Honest intent – there is a presumption of the debtor's honest intent, which creditors may contest in "classic" civil proceedings, but not in the course of debt relief proceedings.

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?

Bankruptcy proceedings apply to:
(a) assets that belonged to the debtor when the bankruptcy order was made,
(b) assets that the debtor acquired during bankruptcy proceedings,
(c) assets securing the debtor's liabilities,
(d) other assets if laid down by the legislation.
Assets subject to bankruptcy proceedings comprise the bankruptcy estate, which is divided into the general estate and separate estates for secured creditors. The following are excluded from bankruptcy proceedings: assets that are not attachable in judicial enforcement or distraint proceedings, customs bonds up to the amount of the customs debt, a tax guarantee, and assets excluded from bankruptcy proceedings under separate legislation. The debtor's income is subject to bankruptcy proceedings to the extent to which it is attachable in enforcement or distraint proceedings. That part of net wages that could otherwise be deducted to settle priority claims is only subject to bankruptcy proceedings to the extent to which a claim against the estate is being satisfied.

4 What powers do the debtor and the insolvency practitioner have, respectively?

The parties' roles in the various types of proceedings:

- The debtor's general obligations:

o The debtor is obliged to prevent insolvency. If insolvency is imminent, the debtor is obliged to take appropriate and proportionate measures without undue delay to avert it. Filing a petition for reorganisation does not relieve the debtor of the obligation to also file for bankruptcy (bankruptcy proceedings will be discontinued if reorganisation is permitted).
The parties' roles in **bankruptcy**:

- Insolvency practitioner:

o During bankruptcy proceedings the insolvency practitioner primarily manages the assets subject to bankruptcy proceedings, realises them and uses the proceeds to pay the debtor's creditors.
o When the bankruptcy order is made, the debtor's right to dispose of assets subject to bankruptcy proceedings and the right to act on the debtor's behalf in matters concerning these assets pass to the insolvency practitioner, who now acts in the name and for the account of the debtor.

The parties' roles in **reorganisation**:

- Insolvency practitioner:
  - The insolvency practitioner's main role is to draft the reorganisation plan in collaboration with the debtor and the creditors.
  - The insolvency practitioner examines the claims lodged and establishes or denies them.
  - The insolvency practitioner supervises the debtor. One of the forms this takes is approving the debtor's legal acts that were specified in the court order permitting reorganisation.
- Debtor:
  - The debtor performs the tasks set out in the reorganisation plan.
  - The debtor is also entitled to file a suggestion with the insolvency practitioner to deny a lodged claim.
  - The debtor acts in their own name and for their own account.

The parties' roles in **debt relief (both kinds):**

- Debtor:
  - Permission for debt relief opens a three-year trial period, during which the debtor is obliged to give the insolvency practitioner, at the end of each year, the amount of money specified by the court, but at most 70% of the debtor's total net income for the elapsed trial year. After deducting his or her remuneration, the insolvency practitioner proportionally distributes the money among the debtor's creditors in accordance with the final distribution schedule.
  - During this trial period the debtor is obliged to make reasonable efforts to find employment as a source of income, or suitable self-employment to the same end, and to provide all the information the insolvency practitioner requires, including information on income, expenditure and any change of residential address, employment or place of employment.
  - The debtor's legal acts during the trial period are subject to the insolvency practitioner's written consent within the scope defined by the court order permitting debt relief.
  - The debtor, represented by the Centre for Legal Aid, files a petition that includes the debtor's CV, a list of related parties, present and past assets and a list of creditors. The debtor declares their cash-flow insolvency and documents the existence of distraint proceedings.
  - During these proceedings the debtor must accept that the right to dispose of the debtor's assets passes to the insolvency practitioner.
- Insolvency practitioner:
  - The insolvency practitioner produces a list of assets in the bankruptcy estate and disposes of them (i.e. the assets subject to the bankruptcy proceedings).
  - The insolvency practitioner terminates certain contracts.
  - The insolvency practitioner realises the assets from the estate, pays the costs of the bankruptcy proceedings, proposes the distribution schedule for the proceeds, and subsequently implements it.
  - If the bankruptcy proceedings use a payment schedule, the insolvency practitioner drafts the payment schedule and submits it to the court for approval.

5 Under which conditions may set-offs be invoked?

Bankruptcy: A claim that was due from the debtor before bankruptcy was declared cannot be set off against a claim due to the debtor after bankruptcy was declared; this also holds for contingent claims lodged in bankruptcy proceedings. Claims that have not been lodged in the way laid down in the legislation, lodged claims acquired by assignment or transfer after bankruptcy was declared, and claims acquired on the basis of contestable legal acts cannot be set off against any of the debtor's claims. No claims may be set off against a claim arising from the liability for failing to file a petition for bankruptcy on the debtor's behalf. This does not preclude the setting-off of other claims.

Reorganisation: The civil-law regulations apply unaltered.

Debt relief through bankruptcy: A claim arising after bankruptcy was declared cannot be set off against a counterclaim of the debtor that arose before bankruptcy was declared. A claim that arose before bankruptcy was declared cannot be set off against a counterclaim of the debtor arising after bankruptcy was declared. This does not preclude the setting-off of other claims

Debt relief through payment schedule: The civil-law regulations apply unaltered.

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

Bankruptcy: **If the debtor had** concluded a mutual performance contract **before bankruptcy was declared** and had performed it, but the counterparty had not performed or only partially performed the contract when bankruptcy was declared, the insolvency practitioner may request that the contract be performed, or alternatively withdraw from it. If the counterparty has now partially performed the contract, the insolvency practitioner may only withdraw from those obligations in the contract that the counterparty has yet to satisfy.

If the debtor had concluded a mutual performance contract before bankruptcy was declared, and the counterparty has now performed it, but the debtor had not performed or only partially performed the contract when bankruptcy was declared, the counterparty may withdraw from those obligations in the contract that the debtor has yet to satisfy; however, the counterparty's claims arising from withdrawing from the contract can only be included in the bankruptcy proceedings by lodging them as a contingent claim.

If the debtor had concluded a mutual performance contract before bankruptcy was declared, and neither the debtor nor the counterparty had performed it or had only partially performed it when bankruptcy was declared, the insolvency practitioner and the counterparty may withdraw from those obligations in the contract that have yet to be satisfied; however, the counterparty's claims arising from withdrawing from the contract can only be included in the bankruptcy proceedings by lodging them as a contingent claim.

If before bankruptcy was declared the debtor had concluded a contract whose object is a commitment to a continuous or repeated activity, or a commitment to refrain from a certain activity or tolerate a certain activity, the insolvency practitioner may terminate the contract with two months' notice, unless the law or the contract provide for a shorter time for terminating the contract; the insolvency practitioner may also terminate the contract even if it was agreed for a fixed term. The insolvency practitioner may only terminate a lease agreement under the conditions set out in the Civil Code (*Občiansky zákonník*). This provision does not apply to contracts concluded under the Labour Code (*Zákonník práce*).

If the counterparty is obliged to perform in advance a contract that was concluded with the debtor before bankruptcy was declared, the counterparty may refuse to perform the contract until mutual performance has been provided or secured.

Under a contract concluded with the debtor before bankruptcy was declared, the counterparty's claims concerning performance provided by the counterparty to the insolvency practitioner after bankruptcy was declared are a claim against the estate. Unless the legislation provides otherwise, under a contract concluded with the debtor before bankruptcy was declared any other of the counterparty's claims arising after bankruptcy was declared can only be included in the bankruptcy proceedings by lodging them as a contingent claim.

If before bankruptcy was declared the debtor sold an item with reservation of title and handed it over to the buyer, the buyer may return the item or insist on the performance of the contract.

If before bankruptcy was declared the debtor bought and took delivery of an item with reservation of title without acquiring ownership of the item, the seller cannot demand the return of the item if the insolvency practitioner satisfies the obligations under the contract without undue delay after being requested to do so by the seller. The insolvency practitioner may satisfy the obligations under such an agreement on the purchase of an item with reservation of title if the item is in the debtor's possession and the insolvency practitioner determines, applying professional diligence, that satisfying the obligations is more advantageous for the estate. If the item is not in the debtor's possession, any claims can only be included in the bankruptcy proceedings by lodging them. These provisions apply *mutatis mutandis* to a contract whose object is the lease of an item at an agreed rent for a fixed term, with the aim of taking ownership of the leased item.

Reorganisation: **The counterparty cannot terminate or withdraw from a contract concluded with the debtor for reason of the debtor's delay in performance to which the** counterparty was entitled before the start of reorganisation proceedings, and any terminating of or withdrawing from the contract for this reason has no effect. Contractual arrangements allowing the counterparty to terminate or withdraw from a contract concluded with the debtor for reason of reorganisation or bankruptcy proceedings have no effect.

Debt relief through bankruptcy: **After bankruptcy is declared it is possible to terminate a contract whose object is** a commitment to a continuous or repeated activity, or a commitment to refrain from or tolerate a certain activity, provided it was concluded before bankruptcy was declared. If the contract concerns assets subject to bankruptcy proceedings, the insolvency practitioner may terminate the contract; in other cases the debtor may do so. Termination comes into effect when notice is served on the counterparty. A contract can also be terminated even if it was agreed for a fixed term. An agreement on leasing an apartment in relation to a third party who is the lessee can only be terminated under the conditions set out in the Civil Code and separate legislation.

The debtor, insolvency practitioner or counterparty may withdraw from another contract if it was concluded before bankruptcy was declared and has yet to be fully performed. Such withdrawal may only be to the extent of those obligations that have yet to be satisfied between the parties mutually.

Provisions on the sale of an item with reservation of title, and on a contract whose object is the lease of an item at an agreed rent for a fixed term, with the aim of taking ownership of the leased item, apply as they do in bankruptcy proceedings.

The provisions set out above do not apply to contracts and agreements concluded under the Labour Code.

Debt relief through payment schedule: **There are no special provisions on the debtor's contractual relations, and the "classic" regulations under civil and commercial law** apply.

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

Effects of declaring bankruptcy:

Enforcement or distraint proceedings cannot be opened on assets subject to bankruptcy proceedings during the bankruptcy proceedings; enforcement or distraint proceedings already opened are discontinued when bankruptcy is declared.

The enforcement of a security interest cannot be started or continued for assets belonging to the debtor for the debtor's liability secured by a security interest; this effect does not apply to:

the enforcement of a security interest relating to money or claims from an account at a bank or a branch of a foreign bank;

government bonds;

transferable securities.

If before bankruptcy was declared the object of an auction was awarded under separate legislation, and such item is subject to the bankruptcy proceedings, and the bidder has paid the auctioneer the price set at the auction, the ownership or other right to the object of the auction passes to the bidder. The proceeds from the auction become part of the relevant estate and the costs of the auction are a claim against that estate; if the auction was requested by a creditor with a secured claim, the proceeds are paid to the creditor up to the amount of the secured claim, as though bankruptcy had not been declared.

Effects of reorganisation:

- Enforcement or distraint proceedings cannot be opened on assets belonging to the debtor for a claim that is lodged in the reorganisation process; enforcement or distraint proceedings already opened are stayed when bankruptcy is declared and later in the proceedings they are discontinued. If assets have already been realised in these proceedings, but the proceeds have yet to be paid to the entitled party, the proceeds are returned to the debtor less the costs of the proceedings.

It is not possible to open or continue the enforcement of a security interest on assets belonging to the debtor for a secured claim that is lodged in the reorganisation process.

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

Bankruptcy:

When bankruptcy is declared, all judicial and other proceedings are stayed and time limits are paused.

Proceedings may be continued at the proposal of the insolvency practitioner, who by filing a petition for proceedings to continue becomes a party to the proceedings in place of the debtor.

The following proceedings are not stayed:

proceedings to resolve financial market crises within the meaning of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014,

tax proceedings,

customs proceedings,

expropriation proceedings,

maintenance proceedings,

criminal proceedings (but there cannot be rulings on damages),

even in the above proceedings, the time limit for the insolvency practitioner to file a remedy will not elapse any sooner than 30 days from the first creditors' meeting.

Reorganisation:

When reorganisation is permitted, any judicial and arbitration proceedings concerning claims that are lodged in the reorganisation process are stayed. Claims can only be made by lodging them (the denying and establishing of claims).

Debt relief through bankruptcy:

Judicial proceedings on a claim that can only be satisfied in bankruptcy proceedings are discontinued; however, the limitation period will not elapse any sooner than 60 days after bankruptcy is declared.

If bankruptcy is later discontinued on the grounds that there were no preconditions for bankruptcy proceedings, the discontinuation of proceedings is disregarded.

If another creditor has denied a claim not affected by debt relief, the denial of the claim gives this creditor the right to intervene in the proceedings.

Debt relief through payment schedule:

This has no effects on judicial and other proceedings.

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

Bankruptcy:

Creditors:

Creditors autonomously exercise their will concerning the conducting of the bankruptcy proceedings, either independently or through creditors' bodies. In this way they can influence the bankruptcy proceedings and oversee the administration and realisation of assets. They can instruct the insolvency practitioner on how to proceed; they can also deny claims, etc.

During bankruptcy proceedings the court supervises the work of the insolvency practitioner.

Reorganisation:

Creditors:

The creditors' role is to contribute, through creditors' bodies, to drafting and approving the reorganisation plan.

A creditor who lodges a claim with the insolvency practitioner is entitled to file a suggestion with the insolvency practitioner to deny (another) lodged claim.

Debt relief through bankruptcy:

Creditors:

Creditors must lodge their claims.

Secured creditors can consider lodging their claims; however, they may also enforce their security interests.

A creditor can deny other creditors' claims.

A creditor can act as the creditors' representative.

A creditor can subsequently (after proceedings have ended) bring an action against the debtor to cancel debt relief due to dishonest intent.

Debt relief through payment schedule:

Creditors:

The payment schedule only concerns unsecured creditors; secured creditors are not affected by debt relief with a payment schedule.

Creditors must accept the protection against creditors that the court provides.

A creditor who is affected by the payment schedule can object to the payment schedule once the insolvency practitioner has announced the drafting of the payment schedule and to the proposed percentage for satisfying unsecured creditors.

A creditor can subsequently (after proceedings have ended) bring an action against the debtor to cancel debt relief due to dishonest intent.

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

Bankruptcy

When the bankruptcy order is issued, the debtor's right to dispose of assets subject to bankruptcy proceedings and the right to act on the debtor's behalf in matters concerning these assets pass to the insolvency practitioner, who now acts in the name and for the account of the debtor.

If legal acts by the debtor during bankruptcy proceedings are to the detriment of the assets that are subject to the bankruptcy proceedings, they are ineffective in relation to the creditors; this does not prejudice their validity.

In bankruptcy proceedings, those owing debts subject to the bankruptcy proceedings are obliged to pay them to the insolvency practitioner; this obligation still applies if they pay them to another party, unless the insolvency practitioner receives such payments.

During the bankruptcy proceedings the debtor may only refuse a gift or inheritance with the insolvency practitioner's consent; otherwise the refusal of the gift or inheritance is ineffective in relation to the creditors.

If a bankruptcy order is made for a legal person in liquidation, liquidation is interrupted until the bankruptcy proceedings are cancelled.

The competent body (creditors' committee, secured creditor, or in special cases the court) instructs and makes recommendations to the insolvency practitioner concerning managing the assets, running the debtor's enterprise or a part thereof, and realising the assets. This also includes hiring out the assets or a substantial part thereof (with restrictions when the enterprise is in operation).

The competent body also issues instructions for:

concluding an agreement on the temporary provision of funds in connection with running the debtor's enterprise;

continuing the running of the enterprise if the debtor is a particular type of financial institution;

establishing a lien on the debtor's assets;

concluding an agreement in connection with running the debtor's enterprise, in which the insolvency practitioner undertakes to continue performance beyond a particular time period or a particular percentage of turnover;

The insolvency practitioner must request instruction before making the initial legal act in this matter, and must wait for the instruction. If the competent body does not respond, the practitioner asks the court to decide how to proceed, and the court order is binding on the practitioner. The practitioner's request must include all relevant information.

In other matters the competent body may recommend how the insolvency practitioner should proceed, and if the practitioner refuses to comply with this recommendation, the body may ask the court to decide how to proceed, and the court order is binding on the practitioner.

If the competent body instructs the insolvency practitioner to act in a way that is contrary to the interests of the other creditors or the rules for asset realisation, the insolvency practitioner refuses to act on the instruction and asks the body to amend it. If it does not do so, the practitioner asks the court to decide how to proceed, and the court order is binding on the practitioner.

The insolvency practitioner manages the assets subject to the bankruptcy proceedings with professional diligence to ensure they are adequately protected from loss, damage, destruction or other impairment, and that expenses incurred for managing the assets are only at a level that is essential, after assessing the expediency and economy of these expenses.

When managing assets subject to the bankruptcy proceedings, the insolvency practitioner may not favour any of the creditors, nor prioritise personal interests or the interests of others over the common interest of all creditors.

The insolvency practitioner may hire out assets belonging to the debtor that are subject to the bankruptcy proceedings. The practitioner is obliged to agree a lease contract in which the rent is at least at the level for which such an item is usually hired in the given place and time, and must ensure that the lease contract does not establish any obligations for the debtor other than statutory ones, and that the lessee's obligations under the lease contract are appropriately secured, and must also ensure that the lease contract can be terminated with one month's notice. If these conditions are not met, the practitioner can only conclude a lease contract with the competent body's consent. Income from this lease is treated as proceeds from realising the assets subject to the bankruptcy proceedings.

After the bankruptcy is declared, the insolvency practitioner can continue some of the activities related to the debtor's business activities if doing so increases the value of the assets subject to the bankruptcy proceedings, or prevents their value from diminishing. If the costs of these activities are greater than the revenues from them, the practitioner discontinues these activities without delay.

Asset realisation

The purpose of realising assets subject to bankruptcy proceedings is to obtain the greatest possible proceeds in the shortest possible time and at the least possible expense. When realising these assets, the insolvency practitioner chooses with professional diligence a method that will best satisfy the purpose of realisation and comply with the rules for realisation set out in the legislation.
The insolvency practitioner appointed when bankruptcy was declared realises without delay any assets in immediate danger of ruin, destruction or other substantial impairment; this does not require any instructions from the competent body nor a court ruling. The practitioner may start realising the other assets after the first creditors' meeting.
The insolvency practitioner keeps transparent records of the realisation of assets subject to the bankruptcy proceedings, with separate records for the general estate and each separate estate. After realising each asset, the practitioner allocates the proceeds to that part of the list that was the object of realisation. If the practitioner jointly realises several parts and the individual proceeds cannot be determined, the practitioner divides the joint proceeds proportionally between the parts concerned in accordance with their relative values according to the values stated in the list.
The insolvency practitioner deposits the proceeds from realising assets subject to the bankruptcy proceedings on an account at a bank or a branch of a foreign bank; interest paid by the bank or the branch of a foreign bank on the balance on the account is treated as proceeds from realising the assets subject to the bankruptcy proceedings.
For the purposes of realising assets, the insolvency practitioner may:
(a) announce a competitive public tender,
(b) entrust the sale of assets to an auctioneer,
(c) entrust the sale of assets to a securities trader,
(d) hold an auction, tender or other competitive process leading to the sale of the assets,
(e) sell the assets in another appropriate way.
When realising an enterprise, the insolvency practitioner uses a contract to transfer to the buyer all items, rights and other assets belonging to the enterprise. Of the liabilities related to the enterprise, the only liabilities passed to the buyer are those arising in connection with the operation of the debtor's enterprise after bankruptcy was declared, together with non-monetary liabilities from the employment relations listed in the contract (the principle of *nemo plus iuris* does not apply).
If the insolvency practitioner realises the assets subject to the bankruptcy proceedings other than by selling the enterprise, a part of the enterprise or a substantial part of the assets belonging to the enterprise, the practitioner may only realise real estate subject to the bankruptcy proceedings through auction; the practitioner announces the auction in the Commercial Bulletin (*Obchodný vestník*).
When realising the assets, the insolvency practitioner is not bound by the right to accede to the transfer of shares, the right to request the transfer of shares, the right to request the acquisition of shares or any contractual pre-emptive rights. If realising assets to which there is a statutory pre-emptive right, or a pre-emptive right established as a right *in rem*, the insolvency practitioner writes to offer the object of the pre-emptive right to whoever is entitled under the pre-emptive right; the insolvency practitioner is not bound by this preemptive right if the entitled party does not exercise it within 60 days of the receipt of the written offer.
With the realisation of the assets, all security interests lapse, other than lien established by the insolvency practitioner after bankruptcy was declared in response to an instruction by the competent body, or a security interest in the assets of a third party that is ranked more senior than the security interest securing the debtor's liability.
In the transfer of an item for a consideration, the buyer acquires ownership even if the debtor was not the item's owner, unless the buyer knew or must have known that the debtor, or a third party whose assets secured the debtor's liability, was not the item's owner. The insolvency practitioner is liable to the item's original owner for any damage thereby suffered, unless the practitioner can demonstrate that he or she acted with professional diligence.

Debt relief through bankruptcy

When the bankruptcy order is issued, the debtor's right to dispose of assets subject to insolvency proceedings and the right to act on the debtor's behalf in matters concerning these assets pass to the insolvency practitioner, who now acts in the name and for the account of the debtor.
If legal acts by the debtor during bankruptcy proceedings are to the detriment of the assets that are subject to the bankruptcy proceedings, they are ineffective in relation to the creditors; this does not prejudice their validity.
The debtor, and with the debtor's consent a person close to the debtor, are allowed to use an item subject to the bankruptcy proceedings as usual, but they are obliged to protect it from loss, damage or destruction, and refrain from anything that would diminish its value beyond ordinary wear and tear. Everyone who uses an item that is part of the bankruptcy estate is obliged to allow the insolvency practitioner to examine it at any time. If someone other than the debtor or a close person has the use of this item, this party may only use it with the practitioner's permission. All income from such use of the item by a third party is part of the bankruptcy estate.
The insolvency practitioner realises higher-value real estate subject to the bankruptcy proceedings by auction, and realises lower-value real estate subject to the bankruptcy proceedings as movable property.
The lowest bid when realising real estate by auction is the amount specified by a lodged secured creditor whose security interest in the item auctioned is ranked the most senior, or by the creditors' representative if there is no security interest in the item auctioned.

Realising the debtor's home

The insolvency practitioner can only realise the debtor's home by auction.
The debtor's home cannot be realised if after deducting the exempt value of the home (EUR 10 000) the proceeds would not cover the costs of realising the home plus at least part of the registered creditors' claims. The insolvency practitioner estimates the value of the debtor's home; however, if any of the creditors submits an expert opinion and pays an advance payment towards the notary's fee for verifying the progress of the auction, the decision is based on the expert opinion. If the item is not then realised, this creditor is obliged to pay the costs of realisation.
If the debtor's home is realised, the insolvency practitioner remits an amount corresponding to the exempt value of the debtor's home (outside the distribution schedule) to a special bank account that the practitioner has opened for this purpose on the debtor's behalf and for the debtor's account, and advises the debtor of this without undue delay. Only the practitioner is authorised to deposit funds on the debtor's special account or transfer funds to it.
Funds on the debtor's special account are not subject to bankruptcy proceedings, distraint proceedings or similar enforcement proceedings for 36 months after the account is opened.
During these 36 months, the debtor is not allowed to dispose of this special account, but has the right to request from the bank or the branch of a foreign bank the withdrawal of cash from the account, with the maximum monthly amount specified by the Slovak government in a regulation (EUR 250).
If the debtor's home is realised and it is the spouses' community property, the insolvency practitioner also opens a special debtor account for the former community co-owner.
Realising movables

The insolvency practitioner realises movables subject to the bankruptcy proceedings as one or more pools of assets in a tender. To this end the practitioner publishes in the Commercial Bulletin the pool of assets for tender and the deadline for bidding, which may not be less than ten calendar days following the publishing of the tender in the Commercial Bulletin. Only bids where the interested party has deposited on the practitioner's account the full advance payment towards the purchase price bid are taken into account. The highest purchase price bid decides the sale. If several interested parties make the same bid, the practitioner decides by lot. The purchaser is obliged to arrange for the removal of the items at the purchaser's expense.
If movables subject to the bankruptcy proceedings cannot be realised even in the third tender, they are no longer subject to the bankruptcy proceedings. If a creditor with a lodged claim expresses interest in this pool of movables, the insolvency practitioner transfers it to the creditor with a lodged claim who makes the highest bid within ten days of the end of the third tender. If several creditors with lodged claims make the same bid, the practitioner decides by lot. The creditor is obliged to arrange for the removal of the items at the creditor's expense.
In response to a written instruction from the creditors' representative or the secured creditor concerned, the insolvency practitioner can realise movables in another way. If several secured creditors are concerned, the written instruction may only be issued by the creditor whose security interest is ranked the most senior.
Realising receivables and other assets
If the debtor's receivables are part of the bankruptcy estate, the insolvency practitioner seeks to recover them, but does not file with a court or another competent authority for their payment. If the practitioner has not succeeded six months after bankruptcy was declared, the receivables are realised by assigning them as movables. The practitioner is not bound by any arrangements that prohibit or restrict the assignment of a receivable. These restrictions cease to apply when the receivable is assigned.
If a receivable is part of the bankruptcy estate, the limitation period is suspended and only continues once the receivable ceases to be subject to the bankruptcy proceedings. A court or another authority stays any proceedings involving a receivable subject to the bankruptcy proceedings until such time as the receivable ceases to be subject to the bankruptcy proceedings.
The insolvency practitioner realises other assets similarly to movables or receivables.
Right to buy back assets from the bankruptcy estate
With the debtor's consent, an entitled person (defined below) has the right to buy back at any time any part of the assets from the bankruptcy estate at the price established by an expert opinion. In this case the provisions on the rules for realisation do not apply.
With the debtor's consent, an entitled person has the right to buy back assets from the bankruptcy estate for the price achieved in an auction or tender, or for the price bid by a creditor, provided the entitled person remits this price to the insolvency practitioner within ten days of the end of the auction or tender, or of the making of a bid by the creditor.
If with the debtor's consent his or her lineal relative, sibling or spouse exercises the right to buy back the debtor's home from the bankruptcy estate, the exempt value of the debtor's home is set off against the purchase price.
For the purposes of invoking the right to buy back assets from the bankruptcy estate, an entitled person is understood as the debtor's lineal relative, sibling, spouse, or the municipality in which the real estate is located.
If an entitled person's right to buy back assets from the bankruptcy estate is violated, the entitled person has the right to demand that the acquirer offers to sell the item to this person. This right lapses if it is not exercised within three months of the realisation of the item.

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?

Bankruptcy

A creditor may lodge all claims against the debtor, including claims that are not yet due for payment.
A secured claim (with a security interest in the debtor's assets) can also be lodged.
A secured claim a creditor has against a person other than the debtor can be lodged if the security interest concerns the debtor's assets (there are certain restrictions on satisfaction in such cases); if such a claim is not lodged, it is treated as a weaker claim against the estate.
Future claims and contingent claims can also be lodged.
Claims that are not lodged by means of an application are called claims against the estate.
They are divided into claims against the general estate and claims against a separate estate (secured with a security interest).
This concerns e.g.:
the costs of realising the estate, the distribution schedule, the insolvency practitioner's fee and the interim practitioner's fee and expenses;
the right to a refund of the advance payment towards the costs of bankruptcy proceedings;
the reimbursement of the insolvency practitioner's necessary expenses for managing the bankruptcy proceedings;
child maintenance that became due after bankruptcy was declared and for the calendar month in which bankruptcy was declared;
costs associated with managing the estate and claims arising in connection with the running of the enterprise during bankruptcy proceedings, including claims from contracts concluded by the insolvency practitioner;
the fee for the liquidator and the responsible representative and the reimbursement of their necessary expenses after bankruptcy was declared;
an employee's wages and other entitlements under an employment contract or a contract for work performed outside employment ("labour entitlements") arising after bankruptcy was declared and for the calendar month in which bankruptcy was declared, at an amount set by the insolvency practitioner or agreed between the insolvency practitioner and the employee to whom the practitioner assigned work relating to managing the estate;
an employee's labour entitlements arising after bankruptcy was declared and for the calendar month in which bankruptcy was declared, at an amount set by the insolvency practitioner or agreed between the insolvency practitioner and the employee to whom the practitioner assigned work relating to the running of the enterprise during the bankruptcy proceedings;
claims for taxes, charges, custom duties, health insurance contributions, social security contributions, contributions to old-age pension schemes and to supplementary pension schemes arising after bankruptcy was declared if they are related to the running of the enterprise during the bankruptcy proceedings;
labour entitlements arising after bankruptcy was declared and for the calendar month in which bankruptcy was declared, at a maximum of four times the monthly subsistence minimum for each calendar month in which the employment relationship has continued since bankruptcy was declared, including the calendar month in which bankruptcy was declared and the calendar month in which employment was terminated;
claims for taxes, charges, custom duties, health insurance contributions, social security contributions, contributions to old-age pension schemes and supplementary pension schemes arising after bankruptcy was declared if they are related to managing and realising assets;
claims for refunds from the guarantee fund if they concern a benefit paid to an employee for the employee's labour entitlements, which are a claim against the estate.
The insolvency practitioner satisfies claims against the general estate on an ongoing basis; if claims of the same ranking against the general estate cannot be fully satisfied, they are satisfied proportionally.
Claims against a separate estate relate to the separate estate.

The insolvency practitioner satisfies claims against the separate estate on an ongoing basis; if claims of the same ranking against the separate estate cannot be fully satisfied they are satisfied proportionally.
Claims against the estate are lodged with the insolvency practitioner. On request the insolvency practitioner notifies the creditor if the practitioner accepts the legal basis and amount of the creditor's claim against the estate, including its ranking.
If the insolvency practitioner does not accept a claim against the estate, the creditor is invited to bring an action against the insolvency practitioner, requesting the court to determine the legal basis or the amount of the claim against the estate. If the creditor does not bring this action in time, the claim against the estate, to the extent to which the insolvency practitioner did not recognise it, is disregarded in the bankruptcy proceedings.
The insolvency practitioner is liable to the creditors and other persons for any damage they suffer due to the practitioner's unreasonable or uneconomical expenses for managing or realising the assets, or for running the enterprise, unless the insolvency practitioner can establish that he or she proceeded with professional diligence.
The insolvency practitioner keeps transparent records of claims against the estate, and is obliged to submit a printout from these records to the court.

Debt relief through bankruptcy

Three groups of claims are recognised in debt relief:
Claims that can only be satisfied in bankruptcy proceedings or with a payment schedule. These are in essence claims that arose before bankruptcy was declared or protection from creditors was provided, as well as accessory claims and claims relating to terminating or withdrawing from a contract concluded before bankruptcy.
Claims that are excluded from satisfaction, i.e. under debt relief they cannot be recovered from the debtor. This concerns the incidentals to claims (a certain part of them), claims from a bill of exchange or promissory note, contractual penalties, other financial penalties, related parties' claims and the costs of the participants in debt relief.
Claims that are not affected by debt relief (the creditor can choose whether to lodge them):
claims not lodged in bankruptcy proceedings for debt relief because the insolvency practitioner did not write to inform the creditor that bankruptcy had been declared for debt relief;
claims against the Centre for Legal Aid;
secured claims within the scope in which they are covered by the object of the security interest;
a claim for liability for personal injury caused intentionally, including incidentals;
a claim for child maintenance, including incidentals;
labour entitlements due from the debtor;
a financial penalty under criminal law;
a non-monetary claim.
If a secured claim in bankruptcy proceedings for debt relief is not lodged, the secured creditor only has the right to seek satisfaction from the object of security interest.
The institution of claims against the estate does not exist in bankruptcy proceedings for debt relief. After realising the estate and ending all disputes that may affect the distribution schedule for the proceeds, the insolvency practitioner draws up the distribution schedule for the proceeds, without undue delay and 60 days at the latest after bankruptcy was declared. The insolvency practitioner announces the intention to compile this distribution schedule in the Commercial Bulletin.
From the proceeds, the insolvency practitioner first deducts the costs of the bankruptcy proceedings, followed by the exempt value of the debtor's home, if any, then satisfies claims lodged for maintenance for the debtor's children, and then distributes the balance proportionally among all registered creditors in accordance with the level of their established claims. Each creditor bears the costs of satisfaction.
The costs of the bankruptcy proceedings are:
the insolvency practitioner's fee and the costs of realising the assets and producing the distribution schedule;
the insolvency practitioner's necessary expenses for managing the bankruptcy proceedings;
costs related to managing the assets subject to the bankruptcy proceedings;
an advance payment towards the costs of an expert opinion;
the costs of investigations undertaken by the insolvency practitioner at the request of a creditor, in the amount approved by the creditors' representative or a creditors' meeting.

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

Lodging claims in bankruptcy proceedings

A claim that is not a claim against the estate is lodged in bankruptcy proceedings by means of an application.
A copy of the application is lodged with the insolvency practitioner and must be sent to the practitioner within the standard deadline for lodging claims of 45 days after bankruptcy was declared; the creditor also sends a copy of the application to the court.
If a creditor sends the application to the insolvency practitioner later it is taken into account, but the creditor cannot exercise any voting rights or other rights attaching to the lodged claim. This does not prejudice the creditor's right to proportional satisfaction; however, the creditor may only be paid from the proceeds assigned to the distribution schedule of proceeds from the general estate, where the plan to draw up the distribution schedule was announced in the Commercial Bulletin after the insolvency practitioner received the application. The insolvency practitioner publishes in the Commercial Bulletin the registering of this claim in the list of claims, with the creditor's name and the amount of money.
For a secured claim, the security interest must be invoked in a due and timely manner in an application sent to the insolvency practitioner within the standard deadline for lodging claims of 45 days after bankruptcy was declared; otherwise it will lapse. An application can also be used for a future claim or a claim that depends on a certain condition being met ("contingent claim"); however, the creditor may only exercise the rights related to a contingent claim once the creditor has proved to the insolvency practitioner that the contingent claim has arisen.
Sending an application to the insolvency practitioner has the same legal effects for the limitation period and the lapse of the right as the exercising of the right in court.
In bankruptcy proceedings, a creditor who has a claim due from a person other than the debtor also lodges this claim if it is secured by a security interest in the debtor's assets.
If such creditor does not lodge this secured claim within the standard deadline, the bankruptcy proceedings disregard the creditor's security interest; however, the creditor has the right against the relevant estate to the surrender of what has thereby enriched the relevant estate, and may exercise this right against the relevant estate as a claim against the estate, but this claim is only satisfied after all other claims against this estate have been satisfied.
Details for an application in bankruptcy proceedings

The application must be lodged using the prescribed form, and must include the essential details. If not, the application is disregarded. These essential details are:
(a) the creditor's first name, surname and residential address, or the creditor's name and registered office;
(b) the debtor's first name, surname and residential address, or the debtor's name and registered office;
(c) the legal basis for the claim to arise;
(d) the ranking in which the claim is to be satisfied from the general estate;
(e) the total amount of the claim;
(f) the creditor's signature.
A separate application must be lodged for each secured claim, stating the amount secured, and the type, ranking, object and legal basis for the security interest.
An application for a contingent claim must also specify the situation in which the claim should arise, or the contingency on which the claim depends.
In the application the total amount of the claim is divided into the principal and incidentals, and incidentals are divided according to the legal basis for them to arise.
Claims are made in euro. If not, the insolvency practitioner calculates the amount of the claim by converting it using the reference exchange rate set and announced by the European Central Bank or the National Bank of Slovakia (*Národná banka Slovenska*) on the day bankruptcy was declared. If the claim is made in a currency whose reference exchange rate neither the European Central Bank nor the National Bank of Slovakia sets or announces, the insolvency practitioner determines the amount of the claim with professional diligence.
Documents are attached to the application to prove the facts stated therein. In the application a creditor who is an accounting entity must include a statement on whether the creditor has included the claim in the creditor's accounts, and to what extent, or give the reasons for not doing so.
An application for a non-monetary claim must include an expert opinion determining the value of the non-monetary claim; if not, the application is disregarded.
A creditor who does not have a residential address or registered office or an organisational unit of the creditor's enterprise in Slovakia is obliged to appoint a representative for the service of documents with a residential address or registered office in Slovakia, and to inform the insolvency practitioner in writing of the appointing of such representative; otherwise documents will only be served on the creditor by publishing them in the Commercial Bulletin.
Defective applications in bankruptcy proceedings
After the standard deadline for lodging claims has elapsed, the insolvency practitioner submits to the court without undue delay a list of submissions that the practitioner believes are not considered applications, stating the practitioner's opinion, and the court decides without undue delay whether these submissions are to be considered applications. The court sends its order to the insolvency practitioner, who informs the parties concerned.
An application to lodge a claim in bankruptcy proceedings can be neither corrected nor amended.
List of claims in bankruptcy proceedings
The insolvency practitioner enters claims lodged in the list of claims. If a creditor so requests, the practitioner promptly issues confirmation of whether the creditor's claim has been entered in the list of claims.
In bankruptcy proceedings the list of claims is the basis for exercising the rights attaching to a lodged claim.
Denying and establishing claims in bankruptcy proceedings
Slovak law does not speak of "admitting" or "not admitting" claims, but of "denying" or "establishing" claims.
The insolvency practitioner compares each claim lodged with the debtor's accounts and other documentation, and with the list of liabilities, while taking into account statements by the debtor and other parties. The practitioner also carries out his or her own investigations, and if a claim is found to be questionable, the practitioner is obliged to deny the questionable parts of the claim.
The insolvency practitioner or a creditor who has lodged a claim may deny a claim (the latter by sending the prescribed form to the practitioner) for reason of its legal basis, enforceability, amount, ranking, or its securing with a security interest, or the ranking of the security interest. If the claim is made by a body, institution or agency of the European Union, the legal basis and the amount stated by the body, institution or agency of the European Union cannot be denied.
A claim can be denied:
within 30 days following the elapse of the standard deadline for lodging claims,
within 30 days following the registering of the claim in the list of claims in the Commercial Bulletin, if the claim was lodged at a later date.
If there is a large number of applications, or another important reason applies, the court may repeatedly, whether in response to a petition by the insolvency practitioner or without a petition, extend the time limit for the insolvency practitioner to deny claims, each time by 30 days at most.
Anyone who denies a claim must always give grounds for doing so, and if denying a certain amount this person must state the amount denied, and if denying the ranking must give the ranking this person accepts, and if denying the security interest must state the scope denied; otherwise denial has no effect. If a denied claim was at least partly confirmed by the court, the person who denied the claim is liable to the creditor in question for any damage caused by denying the claim, unless this person can demonstrate that he or she did so with professional diligence.
The insolvency practitioner records the denial of a claim in the list of claims without undue delay, and notifies in writing the creditor whose claim has been denied.
The denial of a claim by the creditor is effective if:
it was lodged using the prescribed form, and
a deposit of EUR 350 was remitted to the insolvency practitioner's bank account, with the number of the claim in the list of claims as the 'variable symbol'; to this end the insolvency practitioner publishes in the Commercial Bulletin the bank account to which deposits may be made; a deposit may only be made within the time limit for denying a claim, and a separate deposit must be made for each denial of a claim that was lodged in a separate application; the deposit comprises part of the general estate; if there are full or partial grounds for denying the claim, the creditor denying the claim has the right to the refund of the deposit, which can be applied as a claim against the estate.
The debtor is entitled to object to a claim lodged, and must do so within the time limit set for creditors to deny claims. The objection is recorded in the list of claims, but it has no bearing on the establishing of the claim.
A creditor has the right to bring an action seeking the determining of a denied claim in court, and the action must be brought against everyone who denied the claim. This right must be exercised in court against all of these persons within 30 days of the delivery of the insolvency practitioner's written notification of the denial of the claim to the creditor, otherwise it lapses. This action may be brought before the court conducting the bankruptcy proceedings. The right to the determining of a denied claim is also exercised in good time if an action is brought within this time limit before a court that is not competent. The proceedings themselves are governed by the general procedural regulations.
If the creditor of a claim whose ranking is denied does not bring an action, the lowest accepted ranking applies.

If a claim by a creditor is denied, but a body other than the court was competent to decide on the claim, the court that was competent to review the lawfulness of this decision is also competent for proceedings for the determination of this claim; this also applies if a body other than the court did not make such decision.
In the action the creditor can seek a determination of the legal basis, enforceability, ranking and amount of the claim, or its securing with a security interest or the ranking of the security interest. In the action the creditor can at most seek what the creditor stated in the application.
A ruling on the determining of a denied claim is effective for all parties in the bankruptcy proceedings.
On the elapse of the time limit for denying a claim, the claim is considered established to the extent to which it was not denied.
A claim only denied by the insolvency practitioner and a claim denied by a creditor may be admitted by the insolvency practitioner with this creditor's consent, if the court has yet to decide on its determination. Admitting a denied claim means that it is considered established in the scope allowed.
A claim determined by a final decision by a court or another public authority is considered established in the scope allowed.
At the request of the denied creditor, the insolvency practitioner without undue delay submits to the court the application for the claim that was effectively denied by another creditor, together with the documents submitted by the lodging (denied) creditor and the denying creditor, and a statement by the insolvency practitioner on whether and to what extent the claim is recorded in the accounts, whether and to what extent it is disputed by the debtor, and whether and to what extent the insolvency practitioner accepts it or not, and on what grounds. On the basis of these documents the court rules without undue delay on whether and to what extent it awards the creditor voting rights and other rights attaching to the denied claim. The court serves its ruling on the insolvency practitioner and the creditor on whose rights attaching to the denied claim it ruled; this ruling is not published in the Commercial Bulletin. The creditor on whose rights attaching to the denied claim the court ruled may appeal against the ruling.

Lodging claims in reorganisation proceedings

An application is submitted to the insolvency practitioner within 30 days after reorganisation is permitted. An application sent after this time limit is disregarded.
Details for an application in reorganisation proceedings
The provisions on the details for an application in bankruptcy proceedings are used *mutatis mutandis*. For a secured claim, the security interest must be invoked in a due and timely manner in the application; otherwise the claim is considered an unsecured claim.
A claim may only be corrected or amended by replacing the original application with a new application delivered to the practitioner, and this is only possible within the deadline for lodging claims.
On request the insolvency practitioner issues confirmation that the creditor's claim has been registered in the list of claims.
If there is any doubt, the insolvency practitioner may at any time during the reorganisation proceedings submit an application to the court to decide whether to take the application into account.
List of claims in reorganisation proceedings
The insolvency practitioner enters claims lodged and the information presented in the applications in the list of claims so that the list is compiled within ten days of the deadline for lodging claims.
At the same time as compiling the list of claims, the insolvency practitioner invites the debtor to comment on the claims entered within a time limit set by the insolvency practitioner that is no shorter than five working days and no longer than ten working days.
Within three days of the time limit for denying claims, the insolvency practitioner sends a copy of the list of claims, with an indication of the claims denied, to the court; for an assessment of to what extent the claims lodged have been denied, the information recorded in the list of claims sent to the court is decisive.
If there is a change in the information recorded in the list of claims in the course of reorganisation, upon learning of such change the insolvency practitioner promptly records the change in the list of claims, and also promptly writes to notify the court of the amendment of the list of claims.
The list of claims is part of the insolvency practitioner's file.
Denying and establishing claims in reorganisation proceedings
With professional diligence, the insolvency practitioner compares each claim lodged with the debtor's accounts and other documentation, and with the list of the debtor's liabilities, while taking into account statements by the debtor and other parties. The practitioner also carries out his or her own investigations, and if a claim is found to be questionable with regard to its legal basis, enforceability, amount, ranking, or its securing with a security interest, or the ranking of the security interest, the insolvency practitioner is obliged to deny the questionable parts of the claim.
The insolvency practitioner may only deny a claim within 30 days of the deadline for lodging claims. The practitioner denies a claim by recording the denial of the claim and the grounds and extent of this denial in the list of claims; if the practitioner denies the amount of a claim, the established amount of the claim is also recorded in the list of claims. On the elapse of the time limit for denying a claim, the claim is considered established in the scope in which it was not denied. For the purposes of exercising the rights associated with a claim lodged, a claim that has been lodged is considered established also when only its amount is denied.
The debtor or a creditor who delivered a claim to the insolvency practitioner is entitled to file a suggestion with the insolvency practitioner to deny a lodged claim. The insolvency practitioner is obliged to evaluate each suggestion with professional diligence, and to write to inform whoever filed the suggestion of how it has been dealt with. The insolvency practitioner records the suggestion concerning the denial of the claim and how it was dealt with in the list of claims.
Within 30 days of the elapse of the time limit for denying claims, a creditor with a denied claim may bring an action against the debtor, seeking for the court to determine the legal basis, enforceability, amount, securing with a security interest or the ranking of the security interest of the denied claim; in the action the creditor can at most seek what the creditor stated in the application. This action is brought before the court conducting the reorganisation proceedings.
If a creditor with a denied claim does not bring an action for the determining of the denied claim within the statutory deadline, or withdraws the petition for the determining of the denied claim, the claim lodged by the creditor is disregarded to the denied extent in the reorganisation proceedings, and if the court confirms the reorganisation plan the claim cannot be enforced against the debtor to the extent denied.
The court's ruling determining a denied claim is effective for everyone. When the court's ruling on the determining of a denied claim becomes final, the claim is considered established in the scope determined by the court; the claim cannot be enforced against the debtor beyond that scope.
Until the time limit for bringing an action to determine a claim has expired, or until the court has made a final ruling on the determining of a claim, the debtor may accept a denied claim in writing in respect of the creditor; in consequence the denied claim is considered established in the scope accepted. If the insolvency practitioner denied a claim at the request of a creditor, the debtor can only accept the denied claim with this creditor's consent.
During reorganisation, the establishing of a claim is recorded in the list of claims. The insolvency practitioner is obliged to record the establishing of a claim in the list of claims without delay once the claim is considered established, or once the debtor has accepted the claim.
If during proceedings to determine a denied claim, the court declares bankruptcy of the debtor, the court discontinues in its order the proceedings for the determining of the denied claim.

Lodging claims in debt relief proceedings

Debt relief through bankruptcy

The debtor is obliged to attach to the petition for debt relief through bankruptcy a list of creditors, on the basis of which the insolvency practitioner writes to inform each creditor on the list that bankruptcy has been declared.
A creditor can lodge a claim within 45 days after bankruptcy is declared, or later, until such time as the insolvency practitioner announces that he or she is about to compile a distribution schedule.
If a creditor sends an application to the insolvency practitioner after the 45-day deadline, it is taken into account, but the creditor cannot exercise any voting rights.
The provisions on bankruptcy apply to the application *mutatis mutandis* (the form, the content of the application, the currency and annexes); the provisions for defective applications and the list of claims also apply *mutatis mutandis*.
Only another registered creditor can deny a lodged claim. The provisions on denying and lodging claims in bankruptcy apply *mutatis mutandis*. However, to establish a denied claim the acceptance of the creditor who denied the claim is sufficient; the insolvency practitioner's consent is not required.
In debt relief through bankruptcy, all claims against the debtor are discharged (not only lodged claims).
However, this can be reversed by bringing an action to cancel debt relief due to the debtor's dishonest intent, where the legislation explicitly gives as an example of dishonest intent the failure to include a creditor (natural person) in the list of creditors, even when requested to do so by the insolvency practitioner.

Debt relief through payment schedule

The debtor is obliged to attach a list of their liabilities to the petition for debt relief.
In this type of proceedings, creditors do not lodge claims; instead the insolvency practitioner investigates the debtor's circumstances.
When a payment schedule is set, the debtor is relieved from debt; however, this can be reversed by bringing an action to cancel debt relief due to the debtor' s dishonest intent, where the legislation explicitly gives as an example of dishonest intent the failure to include a creditor (natural person) in the list of creditors, even when requested to do so by the insolvency practitioner.

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

Distributing proceeds in bankruptcy

In bankruptcy proceedings, the distribution of the proceeds varies according to the type of creditor (secured creditors, unsecured creditors, creditors with subordinated claims, contractual penalties and claims from creditors related to the debtor):
A secured creditor's secured claim is satisfied (to the extent it has been established) from the proceeds raised by realising the assets comprising the secured creditor's separate estate, after deducting claims against the estate allocated to the listed asset items comprising the separate estate. If a secured creditor's secured claim cannot be satisfied in full, it is satisfied as an unsecured claim to the remaining extent.
Unsecured claims are satisfied (to the extent they have been established) from the proceeds raised by realising the assets comprising the general estate, after deducting claims against the estate allocated to the listed asset item comprising the general estate. If unsecured claims cannot be satisfied in full, they are satisfied proportionally according to their relative levels.
Subordinated claims are satisfied (to the extent they have been established) from the proceeds raised by realising the assets comprising the general estate and remaining in the general estate after the other unsecured claims have been satisfied in full. If subordinated claims cannot be satisfied in full, they are satisfied proportionally according to their relative levels. Contractual penalties and claims from creditors related to the debtor are satisfied in the same way.
The distribution of proceeds in bankruptcy proceedings is based on the distribution schedule. Before drawing up the schedule, the insolvency practitioner compiles a list of claims against the estate which are to be satisfied from the proceeds assigned to the relevant estate (either a separate estate for secured assets or the general estate). The insolvency practitioner publishes this list and announces the plan to draw up the distribution schedule in the Commercial Bulletin. The persons specified by the law, primarily creditors' bodies and the creditors, may examine the list and file objections against it within a set time limit. These objections may concern the ranking of a claim, the failure to assign a claim, the exclusion of a claim and the extent of a claim. After the lime limit has elapsed the insolvency practitioner produces the distribution schedule and submits it to the creditors' committee for approval (if the committee is not active, the distribution schedule is submitted to the court). Once the schedule has been approved the insolvency practitioner pays the undisputed part of the proceeds to the relevant creditor, and retains the disputed part until the court decides.
In general the distribution schedule (whether from a separate estate or the general estate) is drawn up immediately after the relevant part of the assets has been realised. If the nature of the case permits, the insolvency practitioner also compiles a partial distribution schedule, but in the great majority of bankruptcies there is only a single (final) distribution schedule.
The distribution schedule also includes contingent and denied claims. Denied claims are only satisfied if the court rules to establish them. Contingent claims are only satisfied as and when they arise.
After fully realising the assets listed and concluding all related disputes, the insolvency practitioner produces a final distribution schedule for proceeds for unsecured creditors. This final distribution schedule also includes all preceding distribution schedules.

Proceeds are not distributed in reorganisation and debt relief through a payment schedule.

In debt relief through bankruptcy:

After realising the estate and ending all disputes that may affect the distribution schedule for the proceeds, the insolvency practitioner draws up the distribution schedule for the proceeds, without undue delay and 60 days at the latest after bankruptcy was declared. The insolvency practitioner announces the intention to compile this distribution schedule in the Commercial Bulletin.
From the proceeds, the insolvency practitioner first deducts the costs of the bankruptcy proceedings, followed by the exempt value of the debtor's home, if any, then pays proportionally the claims lodged for maintenance for the debtor's children, and then distributes the balance proportionally among all registered creditors in accordance with the level of their established claims. Each creditor bears the costs of satisfaction.
Payments for which the insolvency practitioner has been unable to determine the creditor's bank account or address three months after compiling the distribution schedule accrue to the state. The insolvency practitioner remits these payments to the bank account of the court that declared bankruptcy.
The insolvency practitioner is liable to creditors for any damage they suffer because the distribution schedule for the proceeds was implemented at variance with the rules set out in the legislation, unless the insolvency practitioner can establish that he or she proceeded with professional diligence.
The costs of the bankruptcy proceedings are satisfied from the proceeds assigned to unsecured creditors, in the following ranking:
the insolvency practitioner's fee and the costs of realising the assets and producing the distribution schedule;
the insolvency practitioner's necessary expenses for managing the bankruptcy proceedings;
costs related to managing the assets subject to the bankruptcy proceedings;
an advance payment towards the costs of an expert opinion;
the costs of investigations undertaken by the insolvency practitioner at the request of a creditor, in the amount approved by the creditors' representative or a creditors' meeting.

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

Bankruptcy

The court rules, with or without a petition, to close bankruptcy proceedings if it finds that the debtor has insufficient assets to pay even claims against the estate; in its order the court also rules on the insolvency practitioner's fee and expenses, which are paid from the debtor's assets, the advance payment towards the interim practitioner's fee and expenses, and the advance payment towards the cost of the bankruptcy proceedings.

The court also rules, with or without a petition, to close bankruptcy proceedings if it finds the preconditions for bankruptcy have not been met; it rules on the insolvency practitioner's fee and expenses as when closing bankruptcy proceedings for insufficient assets.

In response to a petition by the insolvency practitioner, the court rules to close bankruptcy proceedings after the final distribution schedule for the proceeds has been implemented.

The court promptly publishes its order to close bankruptcy proceedings in the Commercial Bulletin, and also serves it on the debtor and the insolvency practitioner. The insolvency practitioner and a creditor whose established claim has not been satisfied in full or even in part are entitled to appeal against the order.

The court announces the finality of its order to close bankruptcy proceedings in the Commercial Bulletin. On the publishing of this announcement, several effects and the function of the creditors' committee, if established, end. The validity and effect of the acts performed during the bankruptcy proceedings are not affected thereby.

On the day bankruptcy proceedings are closed, the insolvency practitioner closes the accounts and compiles an individual set of financial statements in accordance with the specific legislation. The insolvency practitioner also surrenders all necessary documents and the remaining assets to the debtor or the liquidator, and makes the necessary arrangements relating to the closing of bankruptcy proceedings. Once the insolvency practitioner has performed these duties, the court removes the practitioner from his or her office.

Bankruptcy proceedings can also be closed by an order in which the appeal court overturns the ruling by the court of first instance, or amends the part concerning the declaration of bankruptcy. The court serves this order on the debtor and the insolvency practitioner. It also promptly publishes the order in the Commercial Bulletin, whereupon the effects of bankruptcy proceedings lapse and the security interests that lapsed are restored, and the office of the insolvency practitioner and of the creditors' committee, if established, ends.

In the order referred to in the above paragraph, the court rules on the insolvency practitioner's fee, which is to be paid under the court's order by whoever filed the petition for bankruptcy.

If the debtor is a natural person who dies during the bankruptcy proceedings, the debtor's heirs take his or her place to the extent of the assets subject to the bankruptcy proceedings, or the state, if there are no heirs or if they have refused their inheritance.

On the basis of an excerpt from the list of claims, after bankruptcy proceedings have closed a petition may be filed for enforcement or distraint proceedings for an established claim that the debtor did not explicitly object to within the time limit set by the insolvency practitioner. The insolvency practitioner deposits the list of claims with the court after bankruptcy proceedings have been closed.

Reorganisation

The court decides on a petition filed by the plan's originator seeking confirmation of the plan adopted by the approval meeting. The originator is obliged to file this petition within ten days of the approval meeting, and it must include the minutes of the approval meeting and the plan adopted.

A petition for the confirmation of the plan can be filed even if the plan was not adopted by the approval meeting or agreed by the debtor.

If the plan's originator does not file a petition within the statutory deadline for the confirmation of the plan, the insolvency practitioner promptly asks the court to declare bankruptcy.

If one of the groups did not have the majority of votes required to adopt the plan, in the petition for the confirmation of the plan the plan's originator can request the court to substitute for the adopting of the plan in the group with the court's ruling, provided:

the plan does not mean that the parties who were assigned to the group that voted against adopting it will not clearly be in a worse position than if the plan were not adopted; the court bases its decision on their likely satisfaction in bankruptcy proceedings on the day the reorganisation proceedings begin, working with the data presented in the plan, unless proved otherwise;

the majority of the groups set up in accordance with the plan had the majority of votes necessary to adopt the plan; and

the creditors present voted in favour of adopting the plan with an absolute majority of votes, which are counted in line with the amount of their established claims.

The court rules on substituting for consent in its order to confirm or reject the plan.

If there is no reason to reject the plan, the court decides to confirm it within 15 days of the receipt of the petition for the confirmation of the plan; the plan confirmed by the court comprises an annex to this order. In its order on the confirmation of the plan, the court also decides on closing the reorganisation proceedings.

The court publishes its order in the Commercial Bulletin without delay. The plan confirmed by the court is not published; this does not apply to the provisions on a new loan.

The plan confirmed by the court is part of the case file. The parties to the plan and their representatives have the right to examine the case file and the plan confirmed by the court, and to take excerpts from it and make duplicates and photocopies, or to ask the court to make photocopies in return for paying the costs.

The court decides to **reject the plan** if:

there was a substantial violation of the legislation on the details of the plan, the procedure for producing the plan, voting on the plan or other provisions concerning the plan, if this had negative impacts on any of the parties to the plan;

the adopting of the plan was achieved by fraudulent conduct, or by offering special privileges to any of the parties to the plan;

the plan was not adopted by an approval meeting; this does not apply if the court's ruling has substituted for the meeting's consent;

if under the plan shares or other equity participations in the debtor or the acquiring entity are not to be issued in return for new cash investments or by exchanging the claims of creditors in the group for unsecured claims, with the exception of creditors in the group for employees' unsecured claims, and this at least at the amount of profit distributed for the last two years;

the plan is inequitable for groups of creditors insofar as it also anticipates that a right or the obligations contained in the plan may arise, change or lapse such that creditors in the groups for unsecured claims will receive satisfaction later than secured creditors, with no fair reason warranting this;

the plan is substantially contrary to the creditors' common interest;

the satisfaction of any of the unsecured claims is less than 50% of the claim; this does not apply if the creditor in question consents in writing to this lower satisfaction;

according to the key part of the plan, payments for settling any of the unsecured claims are to be provided over a period of more than five years; this does not apply if the creditor in question consents in writing to this longer period for payments to settle the creditor's claims.

The court publishes its order to reject the plan in the Commercial Bulletin without delay. The plan's originator may appeal against the order within 15 days after it is published in the Commercial Bulletin. The appeal court rules on the appeal within 30 days of its filing.
Once the order rejecting the plan becomes final, the court makes a single order to discontinue the reorganisation proceedings, opens bankruptcy proceedings and declares bankruptcy on the debtor's assets. In its order the court also appoints an insolvency practitioner, who is selected at random. The court publishes this order in the Commercial Bulletin without delay, whereupon the effects of the opening of the reorganisation proceedings are extinguished, and the function of the creditors' committee and the office of the insolvency practitioner end. The court serves the order on the debtor and the insolvency practitioner appointed by the order.

Debt relief through bankruptcy

Proceedings are closed in three cases:
if the insolvency practitioner discovers that the bankruptcy estate will not cover the costs of the bankruptcy proceedings (the debtor remains relieved from debt);
if no creditor registers for the bankruptcy proceedings (the debtor remains relieved from debt);
if the insolvency practitioner implements the distribution schedule for the proceedings (i.e. after realising the assets, the practitioner distributes the money among the creditors), the debtor remains relieved from debt;
if the preconditions for bankruptcy proceedings were not satisfied, the court also cancels the debt relief.
In both cases the insolvency practitioner publicly announces that bankruptcy proceedings have been closed. On the closure of the bankruptcy proceedings:
the office of the insolvency practitioner ends;
the office of the creditors' representative ends;
the insolvency practitioner's authorisation to manage the debtor's assets and act in matters concerning these assets lapses;
the debtor's obligation to pay claims in the bankruptcy proceedings to the insolvency practitioner lapses;
the inadmissibility of setting off claims lapses;
the restrictions on terminating and withdrawing from contracts lapse;
the proceedings to determine a denied claim close.

Debt relief through a payment schedule – closure

proceedings close if the court finds that after a petition has been filed to set a payment schedule the conditions for providing protection against creditors have not been met;
proceedings close if in the order on providing protection against creditors the court instructed the debtor to deposit an advance payment for the insolvency practitioner and the debtor did not do so within seven days of the insolvency practitioner's request;
proceedings close if the insolvency practitioner publicly announces that the debtor's circumstances do not permit a payment schedule to be set;
proceedings close if the court decides that the debtor's circumstances do not permit a payment schedule to be set;
proceedings close when the court sets a payment schedule (only in this case is the debtor relieved from debt).

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

Bankruptcy

On the basis of an excerpt from the list of claims, after bankruptcy proceedings have been closed a petition may be filed for enforcement or distraint proceedings for an established claim that the debtor did not explicitly object to within the time limit set by the insolvency practitioner. The insolvency practitioner deposits the list of claims with the court after bankruptcy proceedings have been closed.

Reorganisation

A petition to declare the plan ineffective in relation to a creditor may be filed on the basis of the following factors:
This must be a creditor who voted against the adopting of the plan and entered a warranted objection in the minutes of the approval meeting,
or a party to the plan who can be a provider of state aid.
Under the plan, claims assigned to the same group as the creditor's established claim are to be satisfied at a different level or in another way, meaning that creditors with these claims are privileged over the creditor; or
the property rights of shareholders assigned to the same group as the creditor's property right as a shareholder are to be satisfied under the plan at a different level or in another way, meaning that the shareholders with these property rights are privileged over the creditor; or
the plan's originator did not assign the creditor's established claim to a group as the creditor requested, which put the creditor in a worse position than if the plan were not adopted; the court bases its decision on the likely satisfaction for the creditor in bankruptcy proceedings; or
the plan's originator did not assign the creditor's established claim to the group for secured claims to the extent the creditor requested, which put the creditor in a worse position than if the plan were not adopted; the court bases its decision on the likely satisfaction for the creditor in bankruptcy proceedings; or
the implementation of the confirmed plan will result in the providing of unauthorised state aid.
In addition, the following reasons for ineffectiveness can be put forward (by any creditor):
If the debtor or the acquiring entity does not satisfy a claim or another of their obligations under the plan to a party to the plan in a due and timely manner within 30 days of receiving notice, the plan becomes ineffective with regard to the party's claim.
After the closure of reorganisation, the debtor or the acquiring entity cannot distribute profit or other equity funds among its members before the satisfaction of the claims of creditors in the group for unsecured claims up to the level of their established claims under the plan (in bankruptcy proceedings the distribution of profit or other equity funds can be contested). The petition for ineffectiveness is filed by an unsecured creditor.
If the debtor or the acquiring entity generates a profit that is disclosed in the financial statements, and does not need this profit to keep the enterprise or a substantial part of it in operation, as envisaged by the plan, an unsecured creditor has the right to seek in the court that confirmed the plan the satisfaction of the creditor's original claim from this profit, at the difference between the amount required to satisfy the claim and the payment made to this creditor under the plan; however, the court cannot award the creditor any more of this profit than the proportion due vis-à-vis the other creditors in the same group.
If the plan is ineffective against a creditor, the debtor and the acquiring entity are jointly and severally obliged to settle the creditor's original claim to the extent the claim was lodged and established, together with interest calculated on the established part of the claim since the start of reorganisation. The debtor and the acquiring entity are obliged to settle the creditor's claim within the original time limit for payment.
If the plan is ineffective against a shareholder of the debtor, the debtor and the acquiring entity are jointly and severally obliged to pay the shareholder an amount that would correspond to the shareholder's proportion of the debtor's liquidation proceeds at the time the court confirmed the plan. Unless the shareholder can prove otherwise, the value of the liquidation proceeds is deemed to be zero.
If the plan is ineffective in respect of the debtor or the acquiring entity, enforcement or distraint proceedings for the creditor's original claim can be conducted.

Debt relief through bankruptcy

Honest intent – there is a presumption of the debtor's honest intent in filing the petition, which creditors may contest in "classic" civil proceedings. They may not contest it during the debt relief proceedings themselves, but only after they have closed.

Debt relief through payment schedule

Honest intent – there is a presumption of the debtor's honest intent in filing the petition, which creditors may contest in "classic" civil proceedings. They may not contest it during the debt relief proceedings themselves, but only after they have closed.

The debtor does not have honest intent if:

the debtor did not state part of his or her assets in the list of assets, even when asked to do so by the insolvency practitioner, even though the debtor knew or must have known of such assets given the circumstances; negligible-value assets are disregarded;

the debtor did not name a creditor (natural person) in the list of creditors, even when asked to do so by the insolvency practitioner, and in consequence the creditor did not lodge his or claim, even though the debtor knew or must have known of such person given the circumstances; small creditors are disregarded;

the debtor provided important information that was untrue, or failed to provide important information, in the petition or in an annex to the petition or when asked to do so by the insolvency practitioner, even though the debtor knew that this information was important or must have known given the circumstances;

the debtor did not cooperate with the insolvency practitioner as necessary, for no good reason, and such cooperation could have been reasonably required of the debtor;

from the debtor's conduct before filing the petition it can be judged that the debtor had deliberately gone into cash-flow insolvency to allow him or her to file the petition;

the debtor was not cash-flow insolvent at the time of filing the petition and knew of this or must have known given the circumstances;

from the debtor's conduct before filing the petition it can be judged that in assuming liabilities the debtor was counting on being able to resolve his or her debts through bankruptcy or a payment schedule;

from the debtor's conduct before filing the petition it can be judged that the debtor was seeking to harm his or her creditor or privilege one of the creditors;

the debtor is not implementing the payment schedule set by the court in a due and timely manner, for no good reason;

the debtor is not paying child maintenance that became due after the relevant date in a due and timely manner, for no good reason; this reason may only be invoked by the child or the child's legal guardian;

the debtor did not comply with the obligation to refund the Centre for Legal Aid's advance payment towards the insolvency practitioner's flat fee in a due and timely manner, for no good reason; this reason may only be invoked by the Centre for Legal Aid;

the debtor sought to be discharged from debts despite the fact that at the time of filing the petition the debtor's principal interests were not centred in Slovakia.

The court will take a stricter view of factors affecting the debtor's honest intent if the debtor has or has had considerable assets and business experience, and works or has worked as a senior manager, or serves or has served on a legal person's governing bodies, or has other relevant experience.

The court will take more lenient view of factors affecting the debtor's honest intent if the debtor has only basic education, is of or close to pensionable age, has serious health problems, is temporarily or permanently homeless, or has suffered another misfortune that has made it difficult for the debtor to function in society.

The court will only examine the debtor's honest intent in proceedings on a petition to cancel debt relief due to dishonest intent. The court will not examine the debtor's honest intent in bankruptcy proceedings or proceedings to set a payment schedule.

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

Bankruptcy

In principle the costs of convening and holding a creditors' meeting comprise a claim against the estate. The following are exemptions from this principle:

If a creditors' meeting was held at the initiative of a creditor, the creditor who requested the meeting is obliged to pay the costs of convening and holding the meeting, unless the creditors' meeting decides otherwise.

A condition for filing a petition to determine a denied claim, if the claim is only denied by a creditor, is the depositing of an advance payment towards the expenses in a due and timely manner. If the petitioner does not document the depositing of the advance payment, the court discontinues the proceedings.

For performing his or her office, a member of the creditors' committee is entitled to the reimbursement of expenses that the member conclusively incurred in performing this duty; these expenses are a claim against the general estate, for an amount approved by the creditors' committee.

If assets subject to bankruptcy proceedings have been realised in enforcement or distraint proceedings, but the proceeds have yet to be paid to the party entitled to them, the proceeds become part of the relevant estate and the costs of the proceedings are a claim against this estate.

The costs of an expert opinion requested by the creditors' committee comprise a claim against the general estate. The costs of an expert opinion requested by a secured creditor are a claim against this creditor's separate estate (the object of the security interest).

Depending on how the court rules, the costs of proceedings on excluding assets from the list comprise a claim against the estate concerned.

Costs incurred by parties to the bankruptcy proceedings and related proceedings are excluded from satisfaction in bankruptcy proceedings (however, a specific regulation may lay down otherwise, e.g. the amount for determining a denied claim and for expert opinions).

Reorganisation

In principle the debtor pays the costs. The debtor covers:

the opinion on reorganisation,

the insolvency practitioner's fee (flat fee and fee for exercising his or her office) and expenses,

the costs of convening and holding a creditors' meeting,

the expenses that a member of the creditors' committee conclusively incurred in performing this function; the debtor pays these expenses at the amount approved by the creditors' committee.

Debt relief through bankruptcy

In debt relief through bankruptcy it is assumed that the debtor has very limited assets, and costs are therefore reduced to the minimum and are borne by the creditors. If the creditors know of certain assets, they must do what is necessary to transfer them to the bankruptcy estate at their own expense.

The costs that parties to the proceedings have incurred in connection with their involvement in the bankruptcy proceedings or proceedings to set a payment schedule cannot, when debt relief is realised, be recovered from the debtor.

When investigating the debtor's situation, the insolvency practitioner works with a list of assets, a list of creditors and the information provided by the debtor, creditors and other persons. The insolvency practitioner conducts this investigation of assets and liabilities with professional diligence, and likewise any other investigations that require little time and can be undertaken at modest expense.

The insolvency practitioner conducts other investigations at a creditor's request if the creditor makes an advance payment towards the costs of these investigations. The insolvency practitioner conducts such an investigation at the creditor's expense. In bankruptcy proceedings the creditor is entitled to the reimbursement of these expenses, as a cost of the bankruptcy proceedings, at an amount approved by the creditors' representative, or by a creditors' meeting if no creditors' representative has been appointed.

There are separate rules for a secured creditor's costs, which is due to the fact that a secured creditor can choose whether or not to be party to the proceedings.
The encumbered assets only become part of the bankruptcy estate if the priority secured creditor registers.
If only a later secured creditor registers, the encumbered assets are only subject to the bankruptcy proceedings if it can be presumed that there will be satisfaction for the secured creditor with a later security interest. For the purposes of assessing whether the encumbered assets are subject to the bankruptcy proceedings, their value is estimated according to an expert opinion produced on the insolvency practitioner's instructions at the request and expense of this later secured creditor. If the later secured creditor does not deposit the advance payment towards the costs of the expert opinion within the time limit set by the insolvency practitioner, it is presumed that the encumbered assets are not subject to the bankruptcy proceedings.
The insolvency practitioner may (but need not) convene a creditors' meeting if the practitioner considers it necessary. The practitioner convenes such a meeting at the request of any registered creditor who deposits an advance payment towards the costs of holding the meeting, and pays the insolvency practitioner's flat fee for holding it.

Debt relief through payment schedule

The costs of these proceedings are primarily paid by the debtor.
The system is designed so that proceedings only begin (besides the part concerning a formal petition) after the depositing of an advance payment towards the insolvency practitioner's fee and the necessary costs of the proceedings.
The costs that parties to the proceedings have incurred in connection with their involvement in the bankruptcy proceedings or proceedings to set a payment schedule cannot, when debt relief is realised, be recovered from the debtor.
If a creditor does not agree with the proposed payment schedule, the creditor may file an objection with the insolvency practitioner. The insolvency practitioner will comment on the objection and it will be decided by the court.

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

The Bankruptcy Act (*Zákon č. 7/2005 Z.z. o konkurze a reštrukturalizácii*) legislates for acts detrimental to the creditor by making them ineffective under certain conditions. Ineffectiveness only has consequences if the debtor's acts are contested. The insolvency practitioner and the creditors have the right to contest them, but a creditor only has this right if the insolvency practitioner does not act on the creditor's request to contest a legal act within a reasonable time. The right to contest a legal act lapses if it is not exercised in respect of the debtor or in court within a year of bankruptcy being declared; the right to contest a legal act is only considered to have been exercised in respect of the debtor if the debtor acknowledges the right in writing. Under the legislation, legal acts from which entitlements are enforceable, or have already been satisfied, can also be contested.
If before bankruptcy was declared there were reorganisation proceedings, and bankruptcy was declared during these proceedings, to determine the period in which a legal act was made that can be contested under the Bankruptcy Act, the start of the reorganisation proceedings is determinative.
Legal acts must be made by the debtor, and must be made without remuneration or preference or prejudice to the satisfaction of a lodged claim for any of the debtor's creditors. These must be legal acts concerning the debtor's assets.
The Bankruptcy Act defines other detailed rules concerning the proving of the intention to prejudice a creditor. In some cases intent does not have to be proved at all, while in others it is a refutable presumption. The Act also sets out the legal consequences of voidability applied in court, which are the returning of the assets acquired by the party against which the right was exercised.
In reorganisation, acts detrimental to a creditor are important for testing creditors' best interests: when comparing the outcome of the reorganisation plan and possible bankruptcy, the insolvency practitioner must also take voidable legal acts into account.
This aside, legal acts are not contested under reorganisation.
However, in some cases the Act covers the presumptions for any moving from reorganisation to bankruptcy proceedings, and if this happens, certain legal acts are voidable.
The insolvency practitioner can only approve legal acts by the debtor if they increase the value of the debtor's assets or are necessary to achieve the objective of reorganisation. If the debtor makes a legal act that is subject to the insolvency practitioner's consent without this consent, the validity of the legal act is not prejudiced thereby, but the legal act can be contested in bankruptcy proceedings if bankruptcy was declared for the debtor's assets within two years of the start of reorganisation proceedings.
After the closure of reorganisation, the debtor or the acquiring entity cannot distribute profit or other equity funds among its members before the satisfaction of the claims of creditors in the group for unsecured claims up to the level of their established claims under the plan; in bankruptcy proceedings the distribution of profit or other equity funds can be contested and is also a reason for the ineffectiveness of the plan.
In addition, any legal acts made by the debtor or the insolvency practitioner during reorganisation proceedings that give a party to the plan an advantage not envisaged by the plan are null and void.
In debt relief the creditors' rights to seek satisfaction under civil law from anything excluded from the debtor's assets by a voidable legal act remain unaffected. In addition, any subsequent proceedings on honest intent take into account the debtor's conduct, from which it can be judged that the debtor had deliberately gone into cashflow insolvency, or from which it can be judged that the debtor was seeking to harm or privilege any of the creditors.

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Insolvency/bankruptcy - Finland

Insolvency proceedings in Finland

Insolvency means that a debtor is more than temporarily unable to pay their debts when they fall due. Here, insolvency proceedings refer to a proceeding that applies simultaneously to all of the debtor's debts.
There are three different types of insolvency proceedings in Finland: bankruptcy, restructuring of an enterprise, and adjustment of the debts of a private individual. Bankruptcies are governed by the Bankruptcy Act (*Konkurssilaki* 120/2004), which entered into force on 1 September 2004. The Restructuring of Enterprises Act (*Laki yrityksen saneerauksesta* 47/1993) and the Act on the Adjustment of the Debts of a Private Individual (*Laki yksityishenkilön velkajärjestelystä* 57/1993) entered into force on 8 February 1993.
Bankruptcy is a liquidation procedure aimed at realising a debtor's assets and distributing the proceeds to the creditors. Restructuring of enterprises and the adjustment of the debts of private individuals are reorganisation measures that allow debtors to overcome their financial difficulties.
A debtor may also reach an agreement with their creditors on the payment of the debts and other arrangements outside official insolvency proceedings. However, there are no legal provisions governing arrangements which take place on a voluntary basis and therefore such arrangements will not be discussed further here.

Below is a description of the main features of the abovementioned insolvency proceedings.

1 Who may insolvency proceedings be brought against?

Bankruptcy

The scope of bankruptcy is general, which means that both natural and legal persons may be declared bankrupt. A legal person may be declared bankrupt even if they have been removed from the relevant register or dissolved. A decedent's estate or an insolvency estate may also be declared bankrupt.

Restructuring

Any undertaking engaged in economic activity may be the subject of restructuring proceedings, as may a corporation, a private entrepreneur or a self-employed person.

Certain undertakings, however, such as credit and insurance institutions subject to special regulation and control, are excluded from the scope of restructuring proceedings.

Debt adjustment

Debt adjustment may only be granted to a natural person. A natural person who is pursuing a private business or who is pursuing a business in an unlimited partnership or as the general partner in a limited partnership may also be granted a debt adjustment under certain conditions.

2 What are the conditions for opening insolvency proceedings?

The general condition for opening all three types of insolvency proceedings is that the debtor is insolvent. Insolvency means that a debtor is other than temporarily unable to meet their debts as they come due.

Restructuring proceedings can also commence where the debtor is at risk of insolvency.

Bankruptcy

Either the debtor or a creditor may petition for bankruptcy. The general condition for a declaration of bankruptcy is the insolvency of the debtor. The Bankruptcy Act provides for insolvency assumptions to make it easier to establish whether someone is insolvent; a debtor who meets those assumptions is deemed insolvent, unless proven otherwise.

A debtor is deemed insolvent if:

1. the debtor declares that they are insolvent and there are no special grounds for not accepting that declaration;
2. the debtor has discontinued payments;
3. it has been determined in enforcement proceedings during the six months preceding the filing of the petition for bankruptcy that the debtor cannot repay the claim in full; or
4. a debtor, who is or who has been under the obligation to keep accounts during the year preceding the filing of the petition for bankruptcy, has not repaid the clear and due claim of the creditor within a week of the receipt of a reminder.

A creditor may petition for bankruptcy if their claim against the debtor is based on a judgment or other grounds for enforcement, a commitment signed by the debtor, which is not contested by the debtor with obvious justification, or is otherwise clear. The amount claimed does not have to be overdue. There are restrictions on petitioning for bankruptcy on the basis of insignificant claims and in cases where the creditor holds a security for the claim.

Bankruptcy begins when the court declares the debtor bankrupt. At the same time, the court appoints an estate administrator. At the beginning of bankruptcy, the debtor loses their authority over the assets of the insolvency estate.

It is the duty of the estate administrator to inform the creditors of the commencement of bankruptcy proceedings. Any foreign creditor, as referred to in Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings, must be informed as required in the Regulation.

A note of the commencement of bankruptcy proceedings is also made in, for example, the Register on Bankruptcies and Reorganisations, the Trade Register, the Title and Mortgage Register, the Register of Ships, the Register of Ships under Construction, the Aircraft Register, the Enterprise Mortgage Register, the Vehicular and Driver Data Register, and the Book-Entry Register.

A decision of the District Court (*käräjäoikeus*) on an order of bankruptcy or a rejection of a bankruptcy petition may be appealed against to a court of second instance.

Restructuring

A petition for restructuring proceedings may be filed by the debtor or a creditor. Restructuring proceedings initiated by a creditor do not require the debtor's consent. Most petitions are filed by the debtor.

Restructuring proceedings may be initiated if the debtor is insolvent and there are no legal barriers to the commencement of the proceedings. A barrier exists, for example, when it is probable that the restructuring programme will not remedy the insolvency or that the debtor's assets are not sufficient to cover the costs of the restructuring proceedings. Restructuring proceedings can also commence when the debtor faces imminent insolvency. Restructuring proceedings on the basis of imminent insolvency may be commenced on the petition of a creditor only if the claim concerns a considerable financial interest. Additionally, restructuring proceedings may be initiated by at least two creditors whose total claims represent at least a fifth of the debtor's known debts, and they file a joint petition with the debtor or declare that they support the debtor's petition.

The legal consequences of the commencement of restructuring proceedings automatically come into effect from the date of the judgment opening the proceedings. After filing the petition, the court may, upon request by the petitioner or the debtor, order an interdiction of the repayment of the debts and the security provision for debts, an interdiction of debt collection, or an interdiction of distrainment or other enforcement measures to take effect prior to the commencement of the proceedings.

It is the duty of the insolvency practitioner to inform the creditors of the commencement of the proceedings. The commencement of restructuring proceedings must also be notified to certain authorities and an entry must be made in, for example, the Register on Bankruptcies and Reorganisations, the Trade Register, and the Title and Mortgage Register.

A decision of the District Court on the commencement of restructuring proceedings or a rejection of a petition for restructuring proceedings may be appealed against to a court of second instance.

Debt adjustment

A debt adjustment case becomes pending upon the petition of the debtor. The commencement of debt adjustment proceedings requires that the debtor is insolvent and cannot reasonably improve their ability to pay so as to be able to service their debts. The main reason for the insolvency must be an essential decline in the ability of the debtor to pay, owing to a change of circumstances not primarily the fault of the debtor, such as illness. Debt adjustment may also be granted if there is otherwise a good reason for debt adjustment in view of the amount of the debtor's debts and other liabilities in relation to their ability to pay them. When assessing the ability of the debtor to pay, the debtor's assets, income and earning potential, for example, are taken into account.

There must be no impediment in law to the debt adjustment proceedings (e.g. debt incurred through an offence or reckless and irresponsible indebtedness). However, debt adjustment may be granted notwithstanding a general impediment if there is a good reason for doing so. In such cases, attention must be particularly paid to the measures taken by the debtor to repay their debts, how long the claimed amounts have been overdue, and other circumstances of the debtor, as well as the significance of the debt adjustment in terms of both the debtor and the creditors.

Debt adjustment cannot be granted if the debtor has no available funds for a reason that is deemed temporary or if the debtor for such a reason cannot cover more than an insignificant part of their debts with their available funds.
The legal effects of the commencement of the debt adjustment automatically take effect from the date of the judgment opening the proceedings. After filing the petition, the court may, upon request by the debtor, order a temporary interdiction of the repayment of debts and the provision of security for debts, or debt collection, or distrainment and other enforcement measures to take effect prior to the commencement of the proceedings.

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?

Bankruptcy

The assets that the debtor has at the beginning of bankruptcy and the assets that the debtor acquires before the conclusion of bankruptcy form part of the insolvency estate. The proceeds of assets of the insolvency estate, as well as assets that can be recovered to the estate under the Act on the Recovery of Assets to Bankruptcy Estates (*Laki takaisinsaannista konkurssipesään* 758/1991) or on some other basis are also assets of the insolvency estate.
As a rule, non-distrainable assets do not form part of the insolvency estate. In addition, the assets acquired or the income earned by a natural person after the beginning of bankruptcy are not assets of their insolvency estate.

Restructuring

In the restructuring proceedings, a restructuring programme is drawn up for the debtor. The programme must contain, for example, an account of the debtor's financial status, i.e. their assets, liabilities and other commitments. The restructuring programme must be drafted on the basis of the total assets of the debtor at the time of the proceedings. Recovery is also possible: a transaction that could be recovered to an insolvency estate may be required to be reversed in the restructuring proceedings on the same grounds as in the case of bankruptcy.
Although it is possible under exceptional circumstances to amend the restructuring programme after its approval, the amounts of payments to be made to each creditor can no longer be increased by amending the programme. However, assets transferred to the debtor after the approval of the restructuring programme may provide grounds for creditors to demand supplementary payments from the debtor. The debtor may be ordered to make supplementary payments specified in the programme if the state of the finances of the debtor is deemed to be better than it was when the programme was prepared. A demand for supplementary payments may be filed if there are grounds for demanding such payments. The demand must be filed with the court no later than one year after the presentation of the final report to the court.

Debt adjustment

In debt adjustment, a payment schedule corresponding to the ability of the debtor to pay is confirmed for the debtor. When assessing the ability of the debtor to pay, factors that need to be taken into account include the funds from the liquidation of the assets of the debtor, the debtor's income and earning potential, the necessary living expenses, and maintenance liability. In debt adjustment, all of the debtor's income exceeding their necessary living expenses and maintenance liability is used to cover the debts, as well as their other assets which are not among their basic necessities. The assets considered to be basic necessities include the debtor's owner-occupied home, the household furniture, insofar as reasonable, and the debtor's personal effects and work tools, insofar as reasonably necessary. The assets which are considered the basic necessities of the debtor may be liquidated only in the cases provided for by law.
In addition, the payment schedule may require the debtor to make supplementary payments due to additional income or assets received by the debtor during the payment schedule. The debtor is required to pay the creditors a certain proportion of any gifts and other one-off payments received by the debtor during the payment schedule. Where the income of the debtor exceeds the income established for the payment schedule, the debtor may be ordered to pay a certain proportion of the additional income to the creditors.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Bankruptcy

A declaration of bankruptcy is a matter for a court to determine. The court also appoints the estate administrator. A person may be appointed as an estate administrator if they consent to the appointment, have the ability, skills and experience required for the position, and are also otherwise suitable. The estate administrator must not have a relationship with the debtor or the creditor that would compromise the administrator’s independence of the debtor or impartiality towards the creditors, or their ability to perform the task in an appropriate manner. A legal person cannot be appointed as an estate administrator.
The estate administrator has a central role in the administration of an estate in bankruptcy. The duties of the estate administrator include representing the insolvency estate, seeing to the current management of the estate, drawing up the estate inventory and the debtor description, receiving the lodgement of claims, and drawing up the draft disbursement list and the final disbursement list. The estate administrator also sees to the management and sale of assets belonging to the estate and disbursement of the funds.
When bankruptcy starts, the debtor loses their authority over the assets of the insolvency estate. The debtor has the obligation to cooperate so that the bankruptcy proceedings can be brought to a conclusion. The debtor must disclose information to the estate administrator as is necessary for the drawing up of the estate inventory and to attest the estate inventory. The debtor has the right to receive information on the estate, attend the creditors’ meetings, and to express opinions on matters under decision.

Restructuring

Upon commencement of proceedings to restructure an enterprise, the court appoints an insolvency practitioner. The insolvency practitioner must be an adult, known to be honest, not bankrupt, and with full legal competency. They must also have the ability, skills and experience needed for the position. The insolvency practitioner must not have a relationship with the debtor or with any of the creditors that might compromise their independence from the debtor or their impartiality towards the creditors. A legal person cannot be appointed as an insolvency practitioner.
The insolvency practitioner is responsible for realising the purpose of the restructuring proceedings and for protecting the interests of the creditors. The insolvency practitioner draws up a report of the debtors’ assets and liabilities and a proposal for a restructuring programme (some other parties, such as the debtor, are also entitled to draw up their own proposal for a restructuring programme). The insolvency practitioner also supervises the debtor’s activities.
The court may appoint a committee of creditors to represent the creditors and to act as an advisory body to assist the insolvency practitioner in the performance of their duties. A committee is not appointed if this is deemed unnecessary owing to the small number of creditors or some other reason.
The debtor retains the authority over their assets and activities, unless otherwise stipulated by law. However, after the commencement of the proceedings, the debtor may not, for example, take on new debt without the consent of the insolvency practitioner, unless the debt is connected with the regular activities of the debtor and its amount and terms are not unusual. On the request of the insolvency practitioner or a creditor, the authority of the debtor may be restricted also in other ways if there is a risk of the debtor acting in a way that would harm or compromises the interests of the creditor. The debtor is required to cooperate with and provide information to the court, the insolvency practitioner and the committee of the creditors.
As a rule, the debtor may continue to exercise their right of action in pending or upcoming court proceedings, unless the insolvency practitioner decides to undertake to exercise the debtor’s right of action.

Debt adjustment

The court may appoint an insolvency practitioner for debt adjustment, if this is deemed necessary for the clarification of the financial status of the debtor, the liquidation of their assets, or otherwise for the realisation of the debt adjustment. The insolvency practitioner must be an adult, known to be honest, willing to consent to the appointment, not bankrupt, and with full legal competency. They must also have the ability, skills and experience needed for the position. The insolvency practitioner must not have a relationship with the debtor or with any of the creditors that might compromise their independence from the debtor or their impartiality towards the creditors. A legal person cannot be appointed as an insolvency practitioner.
The duty of the insolvency practitioner, if one is appointed, is to draw up the draft payment schedule and perform the other duties imposed by the court on the insolvency practitioner. When drawing up the draft payment schedule, the insolvency practitioner must negotiate with the debtor and the creditors and provide them with the necessary information on the debt adjustment, as well as reserve for them an opportunity to submit a statement on the petition and the draft payment schedule. The insolvency practitioner may also be appointed to see to the liquidation of the assets of the debtor, as well as to the passing of the liquidation funds to the creditors. If no insolvency practitioner is appointed, the debtor is responsible for drawing up a draft payment schedule. The commencement of debt adjustment proceedings is a matter for a court to determine. The court is also responsible for confirming the payment schedule.
The debtor retains the title and right of possession to their assets. However, all assets of the debtor which are not considered to be basic necessities are used to cover the debts. The debtor is required to provide the court, the creditors and, if appointed, the insolvency practitioner with all necessary information on matters relevant to debt adjustment. The debtor also has a duty to cooperate in implementing the debt adjustment appropriately.

5 Under which conditions may set-offs be invoked?

Bankruptcy

Subject to certain exceptions, the creditor has the right to use a claim in bankruptcy for a set-off against a debt owed to the debtor at the beginning of bankruptcy, even if the debt owed to the debtor or the claim has not yet fallen due. The set-off right does not apply to a claim that does not entitle the creditor to a payment out of the insolvency estate, nor any claim that is subordinate to other claims. The creditor has a duty to supply information on a claim to be used for set-off.

Restructuring

Despite an interdiction of debt collection, a creditor has the right to offset a claim against a debt owed to the debtor at the commencement of the proceedings under the same conditions as in bankruptcy proceedings. The notice of set-off must also be served on the insolvency practitioner.
The set-off right does not apply to a set-off by a credit institution against funds that the debtor has on deposit at the institution when the interdiction of collection takes effect or thereafter, or to funds that are at the credit institution at that time for transfer to the debtor’s account, where the account can be used for payments.

Debt adjustment

After the start of debt adjustment, no measures may be directed at the debtor to collect a debt subject to the stay on payment or to secure its payment. The stay on collection also includes the set-off between the debtor’s receivables and debts to the creditor. This stay, however, does not apply to the set-off of taxes.

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

As a rule, contracts not involving receivables subject to the insolvency proceeding remain valid and unchanged in all types of insolvency proceedings.

Bankruptcy

If, at the start of bankruptcy, the debtor has not performed a contract to which they are a party, the other contracting party must request a declaration of whether the insolvency estate will commit to the contract. If the estate declares that it commits to the contract, and posts acceptable security for the performance of the contract, the contract cannot be terminated. However, the other contracting party may terminate the contract if the contract is of a personal nature, or there is another special reason for which there may be no other requirement for the other party to remain under contract with the insolvency estate.
If the employer is declared bankrupt, the employment contract may be terminated by either party regardless of its duration. The period of notice is 14 days irrespective of what it would normally have been. The pay due for the period of bankruptcy is paid from the insolvency estate.
The insolvency estate is also liable for rent arising from a commercial lease agreement for any period during which it uses the premises, even if it has not assumed liability for fulfilment of the obligations arising from the lease agreement. If the estate has not announced, within a time limit of no less than one month set by the lessor, that it will assume liability for fulfilment of the obligations arising from the lease agreement after the commencement of bankruptcy, the lessor has the right to rescind the lease agreement.
If, according to a contract of assignment of movable assets, a term concerning the retention of title or repossession expires when the purchase price is paid, the insolvency estate has the right to commit to the contract by notifying the seller of the same and by paying the outstanding purchase price, plus any overdue interest, in accordance with the original terms. The notice must be given and the price paid within a reasonable time after the seller has requested payment or the return of the assets.
An individual transaction may be annulled under a ground for recovery referred to in the Act on the Recovery of Assets to Bankruptcy Estates.

Restructuring

The commencement of restructuring proceedings has no effect on the existing commitments of the debtor, unless otherwise stipulated by law.
A lease or a credit-lease agreement where the debtor is the lessee may be terminated by the debtor to come to an end two months after the service of notice of the termination, notwithstanding any terms in the agreement on the duration of the agreement or on the service of notice.
A person who has committed to a contractual performance to the debtor before the commencement of the proceedings, but who has not completed the performance at the time of commencement of the proceedings, is entitled to consideration for their performance if the performance can be deemed a regular part of the activities of the debtor. If the issue concerns another type of contract concluded before the commencement of the proceedings and if the debtor has at the time of commencement of the proceedings not met their payment obligation under the contract, the insolvency practitioner will, on the request of the other party, state whether or not the debtor will honour the contract. If the answer is negative or if it is not given in reasonable time, the other party has the right to cancel the agreement.
An agreement whereby the debtor would make a payment based on or connected to a restructuring debt is void, unless the obligation to make the payment is based on the approved restructuring programme.
If an employer is subject to the restructuring procedure, the employer is entitled to terminate the employment contract regardless of its duration at a notice of two months under certain conditions.
A transaction that could be reversed if a bankruptcy application had been filed instead of a restructuring application may be reversed on the request of the creditor in the restructuring proceedings on the same grounds as set out in the Act on the Recovery of Assets to Bankruptcy Estates.

Debt adjustment

The debtor is entitled to terminate a lease or other agreement where the debtor is the lessee, or a consumer contract or hire-purchase agreement, with two months' notice.

The debtor must relinquish assets obtained on the basis of a part-payment or hire-purchase scheme which are not among their basic necessities.
An agreement whereby the debtor is required to make a payment based on or connected to the debt adjustment is void, unless the obligation to make the payment is based on the approved payment schedule or on law.
A person who has committed to a contractual performance to the debtor before the commencement of the proceedings, but who has not completed the performance at the time of commencement of the proceedings, is entitled to consideration for their performance if the performance can be deemed a regular part of the activities of the debtor.
A transaction that could be reversed if a bankruptcy application had been filed instead of a debt adjustment application may be reversed on the request of the creditor in the debt adjustment proceedings on the same grounds as set out in the Act on the Recovery of Assets to Bankruptcy Estates.

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

Bankruptcy

After the start of bankruptcy, no action may be brought against the insolvency estate for the purpose of obtaining grounds for enforcement concerning a claim in bankruptcy, and no enforcement measures may be carried out on the assets of the insolvency estate in order to collect on a claim in bankruptcy. However, a creditor protected by collateral may bring an action to collect on the claim from the collateral.

Restructuring

As a rule, after the commencement of restructuring proceedings, the debtor is subject to an interdiction of repayment and the creditors are subject to an interdiction of debt collection. No measures may be directed at the debtor in order to collect on a restructuring debt or in order to ensure its payment. In certain cases, a secured creditor may request the court to grant the creditor permission to utilise the security in order to obtain payment. This may be possible, for example, if it is clear that, in view of the restructuring arrangements, it is not necessary for the property standing as security to remain in the possession of the debtor.
As a rule, after the commencement of the proceedings, precautionary measures based on official decisions may not be directed against the debtor.

Debt adjustment

As in the restructuring proceedings, in debt adjustment proceedings, the creditor is subject to a stay on debt collection. Where a debt is within the scope of the stay on payment, no measures may be directed at the debtor to collect a debt subject to payment or to secure its payment. In addition, the penalties for late payment do not apply to the debtor. However, in certain cases, a secured creditor may request that the court grant the creditor permission to utilise the security in order to obtain payment. This may be possible, for example, if the assets serving as collateral are not considered basic necessities of the debtor or if the debtor does not need the assets to pursue its business.
The creditor may bring an action or initiate other proceedings so as to retain their right to enforcement or to obtain a basis for enforcement. As a rule, notwithstanding the provisions on the interdictions related to the commencement of debt adjustment, the creditor may also seek an order for precautionary measures and the enforcement of such an order.

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

Bankruptcy

At the start of bankruptcy, the debtor loses their authority over the assets of the insolvency estate to the estate administrator. As a consequence, the insolvency estate has the right to assume the status of a party in issues concerning the assets belonging to the insolvency estate: the estate must be reserved the opportunity to resume court proceedings pending between the debtor and third parties concerning assets of the insolvency estate. If the estate does not avail itself of this opportunity, the debtor may resume the proceedings.
The insolvency estate must also be reserved an opportunity to resume court proceedings concerning a pending claim in bankruptcy against the debtor. If the estate declines to respond to the action, and the debtor is not willing to resume the proceedings, the plaintiff may request that the case be resolved.

Restructuring

The debtor may continue to exercise their right of action in pending court proceedings or in other corresponding proceedings where it is a party, unless the insolvency practitioner decides to undertake to exercise the debtor’s right of action. The same provision applies to court proceedings or other proceedings that will become pending after the commencement of the restructuring proceedings.
The insolvency practitioner has the right to file claims and to initiate court proceedings or other corresponding proceedings on behalf of the debtor, as well as to exercise the debtor’s right of action in the proceedings. Furthermore, the insolvency practitioner may accept notification on behalf of the debtor.

Debt adjustment

Commencement of debt adjustment has no effect on pending court proceedings, or the debtor's right of action in the proceedings.

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

Bankruptcy

The creditor may apply for a declaration of bankruptcy.
In bankruptcy proceedings, creditors exercise supreme authority. The authority in the insolvency estate may be exercised by the creditors insofar as the matter is not by law to be decided or dealt with by the estate administrator. In addition, the creditors may retain authority in respect of matters of the current administration of the estate, or delegate their authority to the estate administrator. The authority of the creditors in bankruptcy begins when the bankruptcy commences and ceases when the bankruptcy ends.
The right to exercise the creditors’ authority belongs to those creditors who have a claim in bankruptcy against the debtor and who have lodged their claim. After the lodgement date, the right only belongs to those creditors who have lodged their claim or whose claim can otherwise be taken into consideration in the disbursement list, as well as to creditors protected by collateral who have presented an account of their claim.
The most important decision-making body is the creditors’ meeting, but other decision-making procedures may also be applied. The creditors may also establish a creditors’ committee to act as a negotiations and liaisons body between the estate administrator and the creditors. The voting strengths of the creditors are determined on the basis of their current claim in the bankruptcy. The decision of the creditors’ meeting is constituted by the opinion that has the support of those creditors whose total voting strength is more than one half of all the creditors participating in the vote. In alternative decision-making procedures, votes are counted on the basis of the voting strengths of the creditors expressing a position.

Restructuring

The creditor may apply for restructuring proceedings.
A committee of creditors may be appointed as the joint representative of the creditors. The committee represents all groups of creditors, and its duties are to assist the insolvency practitioner in the performance of their duties and to monitor the activities of the insolvency practitioner on behalf of the creditors. The committee makes its decisions by simple majority.
When preparing the draft restructuring programme, the insolvency practitioner must negotiate with the committee of creditors and, if necessary, with individual creditors. Additionally, creditors or groups of creditors whose claims exceed the limit laid down by law are entitled to put forward a draft restructuring programme. Once the draft restructuring programme is drawn up, it is forwarded to the creditors for approval. In the event that there are no

barriers to approval of the programme, the programme may be approved with the acceptance of all creditors, acceptance of majorities in the groups of creditors, and, under certain circumstances, even without the acceptance of the majority in all groups of creditors.

Debt adjustment

The creditor may not apply for debt adjustment of a private individual. However, as a rule, before petitioning for debt adjustment, the debtor must determine whether there is a possibility to negotiate a settlement with the creditors. In accordance with the established crediting and debt collection practices, the creditor must cooperate in order to reach a settlement.

The creditors must be provided with the opportunity to submit a statement on the debt adjustment petition and on the draft payment schedule. Where required, the creditors must provide details of their claim in writing. An approved payment schedule may be amended on the request of the creditor, or it may be ordered to lapse on certain grounds.

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

Bankruptcy

Assets of the insolvency estate must be managed with due care and expediency and in compliance with proper administrative practice.

One of the duties of the estate administrator is to see to the sale of assets belonging to the estate. The insolvency estate must liquidate the assets of the estate in the manner most advantageous to the estate, so that the result of the sale is as good as possible. Collateral belonging to the estate may only be sold if the creditor protected by the collateral consents to it or if the court grants permission for the same.

Assets belonging to the insolvency estate may not be transferred to the estate administrator, or assistants of the estate administrator or to persons connected to the estate administrator or an assistant.

Restructuring and debt adjustment

The rights of the insolvency practitioner are limited to the right to access information required to meet the obligations of the insolvency practitioner. The debtor retains the title and right of possession to their assets and the insolvency practitioner has no right to use or transfer the assets of the debtor. However, the debtor requires the consent of the administrator for a number of asset transfer activities.

Debt adjustment

In debt adjustment proceedings, the insolvency practitioner may be ordered to liquidate the assets and to carry out related measures and arrangements, as well as to pass on the resulting funds to the recipients.

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?

Bankruptcy

A claim in bankruptcy means a debt owed by the debtor and based on a legal basis that has arisen before bankruptcy begins. Additionally, claims secured by collateral and claims whose basis or amount is conditional, disputed or otherwise unclear all count as claims in the bankruptcy. In a continuous debt relationship, the part of the debt from the period before the beginning of bankruptcy is deemed a claim in the bankruptcy.

In Finland, insolvency estates have the right to independently conclude agreements and thus have rights and obligations of their own. Claims which have arisen after the start of bankruptcy are considered administrative expenses, i.e. debt of the insolvency estate that is paid in full using the assets of the estate. The insolvency estate is liable for the debts arising from the bankruptcy proceedings or based on a contract or commitment entered into by the estate, as well as for the debts for which the estate is liable under the law. Typically such debts include the fee of the estate administrator, employees' wages and rental costs arising from commercial lease agreements.

Restructuring

Restructuring debt means all of the debtor’s debts that have arisen before the filing of the application, including secured debts and debts whose basis or amount is conditional or contested or which are otherwise unclear. These debts are repaid as specified in the payment schedule of an approved restructuring programme.

Debts arising after the filing of the application are repaid as they become due. The same applies to fees, charges and other running expenses based on a continuous contractual relationship or on a continuous contract on use or possession, insofar as these relate to the period subsequent to the filing of the application.

Debt adjustment

Debt adjustment covers all debts of the debtor which existed before the start of the debt adjustment. This includes security liabilities and debts which are conditional, contentious or otherwise indefinite as to their amount or basis, as well as the interest on such debts accruing between the start of the debt adjustment and confirmation of the payment schedule, and the collection and enforcement expenses on such debts, where ordered payable by the debtor. Debts outside the debt adjustment are repaid as they become due.

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

Bankruptcy

In order to be entitled to a disbursement, a creditor must lodge a claim regarding the bankruptcy in writing (letter of lodgement), by delivering it to the estate administrator no later than on the lodgement date. The letter of lodgement must indicate, for example, the capital amount of the claim, the interest accrued, and the basis for the claim and for the interest. The lodgement may also be revised or supplemented after the lodgement date. A claim may also be lodged retroactively if the creditor pays the insolvency estate an additional charge, unless there has been a valid excuse for not lodging the claim by the date of lodgement. The estate administrator may take a claim in bankruptcy into account in the draft disbursement list without lodgement, if there is no dispute concerning the basis and amount of the claim.

The estate administrator must verify the legitimacy of the lodged claims and their possible ranking order of precedence. The claims conferring a right to disbursement must be indicated in the draft disbursement list. The estate administrator, a creditor or the debtor may dispute a claim in the draft disbursement list, providing details and grounds. Where the claim of a creditor has been disputed, the estate administrator must reserve the creditor an opportunity to be heard on the dispute and to present evidence in support of their claim. A claim that has not been disputed on time must be considered accepted.

After this, the estate administrator must draw up a disbursement list, taking account of the disputes and statements, and submit the list for certification by the court. The court decides the disputes and other disagreements either immediately or in a civil procedure and finally certifies the disbursement list.

Restructuring

The debtor must append a statement on the creditors, the debts and their collateral to its application for the commencement of restructuring proceedings. When the court issues the order on the commencement of restructuring proceedings, it sets a date by which the creditors must declare their claims in writing to the administrator if these claims differ from those reported by the debtor.

When the draft restructuring programme has been delivered to the court, the court must give the parties to the matter an opportunity to declare in writing to the insolvency practitioner their objections to claims referred to in the draft, as well as an opportunity to submit a written statement regarding the draft within a set period, or summon such parties to be heard in court. Both the insolvency practitioner and the debtor may submit objections on behalf of the debtor. The objections are considered and the matter decided together with the consideration of the draft, if this is possible, or the matter may be decided in separate

judicial proceedings. Once the court has made a decision on unclear debt restructuring, the person who has prepared the draft may be given an opportunity to rectify, review or supplement the draft. After this, the creditors vote on the draft restructuring programme.
As a rule, debt during restructuring that has not been declared by the debtor or by the creditor, and which has otherwise not come to the attention of the insolvency practitioner before the approval of the restructuring programme, lapses on the approval of the restructuring programme.

Debt adjustment

When petitioning for debt adjustment, the debtor must provide an account of their creditors and debts. When issuing the order on the commencement of debt adjustment, the court must send copies of the court order, the petition and the debtor's draft payment schedule to the creditors. The court must also set a deadline for the creditors' written notifications on the amount of the adjustable debts, if different from those declared by the debtor, as well as a deadline for the written statements of the creditors on the petition and draft payment schedule of the debtor and for any objections to the debts included in the draft.
The court will deal with the objections in connection with the debt adjustment procedure and will settle them in the payment schedule if this is possible without causing a substantial delay in the debt adjustment. Otherwise, the court directs the matter to be resolved in a separate action or other proceedings. After this, the payment schedule may be confirmed, provided that debt adjustment is granted to the debtor.
The payment schedule may be amended on the petition of the debtor or a creditor if, after the confirmation of the payment schedule, it becomes known that there is an adjustable debt that was not known at the time of the confirmation of the payment schedule.
If an adjustable debt appears after the end of the payment schedule and it would have been possible to amend the payment schedule because of the debt, the debtor must repay the debt to the amount which would have been allocated to the creditor had the debt been included in the payment schedule.

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

As a rule, in all types of insolvency proceedings, claims are considered as equal, i.e. each creditor has an equal right to receive a payment from the disbursed funds in proportion to their claim. Exceptions to this rule concern the provisions on the precedence and lowest priority of claims.

Bankruptcy

Disbursements to the creditors in bankruptcy are paid out in accordance with the certified disbursement list. Provisions on prioritising the claims in bankruptcy in situations where the assets of the debtor are insufficient to cover all claims are laid down in the Act on the Priority of Claims (*Laki velkojien maksunsaantijärjestyksestä* 1578/1992).
Claims secured by a collateral or right of retention are claims with precedence, as are claims arising in connection with a restructuring of an enterprise, maintenance payable to a child and business mortgages. Claims which are subordinate to other claims, and their mutual ranking, are specified by separate provisions. Such claims include the interest and penalty for late payment relating to a subordinated claim accrued after the beginning of bankruptcy, and charges based on public law other than fines and penalty payments.

Restructuring

Creditors who outside the restructuring proceedings would have an equal right to the payment of their claim have an equal status in the debt arrangements within the restructuring programme. However, it may be provided in the restructuring programme that creditors with small claims are to receive payment in full.
Only limited debt arrangement measures may be applied to secured debts, as the capital of a secured debt may not be reduced. The debt arrangement has no effect on the existence or content of a creditor's real security right.
In the debt arrangement, interest and other credit costs accruing during the restructuring proceedings for restructuring debts other than secured debts are deemed to be the lowest priority debts.

Debt adjustment

The debtor's available funds and the funds from the liquidation of his assets must be divided between the ordinary debts in proportion to their amount. All available debt adjustment measures may be applied to the ordinary debt, but the payment obligation concerning secured debts may not be lifted.
The debt arrangement has no effect on the existence or content of a creditor's real security right.
The mechanism least detrimental to the creditor and still sufficient to remedy the financial situation of the debtor must be used. The last liabilities to be allocated as payment from the available funds and the liquidation funds of the debtor are the debts that would be subordinate were the debtor to be declared bankrupt and the interest accrued between the start of debt adjustment and the confirmation of the payment schedule.

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

Bankruptcy

The estate administrator draws up the disbursement list as described in section 12. As a rule, bankruptcy proceedings in court end with the certification of the disbursement list.
The overall bankruptcy proceedings end once the creditors have approved the final settlement of accounts. The estate administrator draws up a final settlement of accounts once the insolvency estate has been accounted for and the assets belonging to the estate have been liquidated. The final settlement of accounts may be drawn up even if the estate is partially unaccounted for, because collateral, or other assets of little value, have not been sold or because a claim in bankruptcy or an insignificant part of the claims is unclear.
A reconciliation to conclude the bankruptcy proceedings may be established in a bankruptcy if the reconciliation is supported by the debtor and by majority of the creditors. With the certification of a reconciliation the appointment of the estate administrator and the authority of the creditors in bankruptcy cease.
The court may make an order on the lapse of bankruptcy if the funds of the insolvency estate are insufficient for the costs of the bankruptcy proceedings or the continuation of the bankruptcy would not be expedient for some other reason. However, no court order on the lapse of bankruptcy may be made, if the bankruptcy will continue under public receivership. Reasons for continuing the bankruptcy under public receivership may include, for example, a need for the debtor to be scrutinised. Public receivership ends in the final settlement of accounts.
Bankruptcy may be ordered to be reversed for a valid reason within eight days of the order of bankruptcy. The legal effects of bankruptcy will then cease.
Liability for debts continues also after bankruptcy. The debtor is not released from liability for those debts in bankruptcy that are not repaid in full in the bankruptcy.

Restructuring

The court procedure on restructuring ends in the approval of the restructuring programme. Approval of the programme will return to the debtor their freedom of action and will cease the legal effects related to the opening of the proceedings, such as the prohibition of payment and debt collection. After the approval of the restructuring programme, the terms of the restructuring debts are governed by the restructuring programme and, as a rule, any unknown restructuring debts will lapse.
The court may, on the request of the supervisor or a creditor, order the restructuring programme to lapse if the debtor has violated the programme and it is not just a minor violation. The restructuring programme will also lapse, if the debtor is declared bankrupt before the conclusion of the programme. The court

may also order that a debt arrangement in the restructuring programme pertaining to a certain creditor is to lapse, for example, if the debtor has materially neglected their obligations under the programme to the creditor. After the lapse, the creditor will have the same rights as they had before the approval of the restructuring programme.
At the conclusion of the restructuring programme, the supervisor or, if there is no supervisor, the debtor must present a final report on the implementation of the programme.

Debt adjustment

The court procedure on debt adjustment ends once the court confirms the payment schedule. After the confirmation of the payment schedule, the terms of the adjustable debts are governed by the payment schedule. The payment obligations set out in the payment schedule are binding on the debtor until all the specified obligations are fulfilled. Regardless of the end of the payment schedule, the debtor's liabilities specified therein remain in effect insofar as they have not been fulfilled. The debtor is not released from the repayment of the remaining debts until all of the obligations set out in the payment schedule are fulfilled.
The payment schedule will lapse if the debtor is declared bankrupt before the conclusion of the schedule. On the request of the debtor or a creditor, the court may order the payment schedule to lapse if the debtor has neglected their obligations as specified by law. After the lapse, the creditor will have the same rights as they had before the debt adjustment.

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

Bankruptcy

The end of bankruptcy does not release the debtor from its liability for debts. In other words, the debtor is still liable for those debts in bankruptcy that are not repaid in full during the bankruptcy.

Restructuring

The creditors have the right to receive payment for their claims itemised in the restructuring programme, and the restructuring does not end until the obligations of the programme are fulfilled. After the conclusion of the programme, the creditors no longer have a right to receive payments.
A restructuring programme may also be ordered to lapse as described in section 14. This means that it ceases to be in effect and the creditors have the same right to payment for restructuring debts as they would have had, had the restructuring programme not been approved. The lapse of the programme has no effect on the validity of transactions already entered into on the basis thereof.

Debt adjustment

The terms of the adjustable debts are governed by the payment schedule. A duration must be determined for the payment schedule. The debtor is fully freed from any outstanding liabilities not included in the payment schedule.
Regardless of the end of the payment schedule, the debtor's liabilities laid down therein remain in effect until they are fulfilled. After the conclusion of the payment schedule, the creditors no longer have a right to receive payments.

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

Bankruptcy

The costs of the bankruptcy proceedings consist of the court fees levied on the procedure, the fee of the estate administrator and any other costs arising from the scrutiny and administration of the estate.
The costs of the bankruptcy proceedings are covered from the funds of the insolvency estate. If the funds of the insolvency estate are insufficient for the costs, a creditor may assume liability for the costs to avoid lapse of bankruptcy.
The court may also decide that the bankruptcy is to continue under public receivership, if this is deemed justified, for example, owing to the insufficient means of the insolvency estate. In such a case, the appointment of the estate administrator and the authority of the creditors in bankruptcy cease. The costs of bankruptcy proceedings arising from public receivership are paid from state funds insofar as the funds of the insolvency estate are insufficient to meet these costs.

Restructuring

Costs of the proceedings, such as the insolvency practitioner's remuneration, are to be paid from the assets of the debtor. Another party may also assume liability for the costs, as one of the barriers to commencing restructuring proceedings is that it is probable that the debtor's assets are insufficient to cover the costs of the proceedings. Nevertheless, it is rare that a third party would assume liability for the costs.
The compensation of expenses for the committee of creditors is the liability of the creditors, unless otherwise specified in the restructuring programme.
A person who wants to exercise the right to present a draft restructuring programme must prepare the draft at their own cost and expense.

Debt adjustment

The costs of the proceedings consist of a reasonable fee for the services of the insolvency practitioner and compensation for the expenses incurred by the insolvency practitioner. As a rule, the debtor must cover the fee and expenses of the insolvency practitioner to an amount not exceeding the available funds of the debtor over the four months following the confirmation of the payment schedule or the modified payment schedule. The part of the fee and expenses not covered by the debtor is paid from state funds. If the petition for debt adjustment is dismissed, the entire fee and expenses are paid from state funds.

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

Recovery provisions are applied to all types of insolvency proceedings.
Assets transferred before opening of insolvency proceedings and which meet the conditions set out in law may be reversed by bringing an action for recovery or an action concerning a title or an action for invalidity. In all types of insolvency proceedings, the provisions of the Act on the Recovery of Assets to Bankruptcy Estates apply to recovery. Grounds for recovery must exist.
The prerequisites for the existence of a ground for recovery, and thus for the reversal of the transaction, are as follows:
– The transaction has been used to inappropriately favour one creditor at the expense of the other creditors, to transfer assets beyond the reach of the creditors, or increase the total amount of debt to the detriment of the creditors;
– The debtor was insolvent at the time of the transaction, or the transaction contributed to the debtor becoming insolvent; if the transaction concerns a gift, another prerequisite is that the debtor was over-indebted or became over-indebted due to the transaction;
– The other party to the transaction was, or should have been, aware of the debtor being insolvent/over-indebted or of the effects of the transaction on the financial status of the debtor, as well as of other factors making the transaction inappropriate.
If the other party to the transaction was a close relative of the debtor, the person in question is deemed to have been aware of the factors listed above, unless they can prove that they acted in good faith. If a transaction was concluded more than five years before the opening of the insolvency proceedings, it can only be reversed if a close relative of the debtor was a party to the transaction.
Debt repayments made more than three months before the date of application for the insolvency proceedings can be reversed if the repayment was made using unusual means of payment or if it was made prematurely or if the repaid amount is deemed significant considering the funds of the estate. Repayments

cannot be reversed, however, if they are deemed ordinary, considering the circumstances. Payments collected by means of distraint can also be reversed, provided that the distraint was carried out more than three months before the deadline. The applied time limit is longer for close relatives of the debtor. The payment can be reversed even if the creditor acted in good faith.

There are also separate provisions governing the reversal of, for example, gifts, division of property, set-offs and collateral.

Last update: 15/02/2024

Insolvency/bankruptcy - Sweden

INTRODUCTION

In Sweden, the Insolvency Regulation (*insolvensförordning*) provides for bankruptcy, business reorganisation and debt restructuring. Some aspects of the Swedish rules governing these procedures under Article 86(1) of the revised Insolvency Regulation are explained in brief below. The description does not set out to be exhaustive.

BANKRUPTCY

General

Bankruptcy (*konkurs*) is a form of general enforcement of claims whereby all of a debtor's creditors jointly take the debtor's total assets, on a compulsory basis, to pay off their respective claims. During bankruptcy, the assets form a bankruptcy estate (*konkursbo*) which is administered for the benefit of the creditors. The estate is managed by one or more bankruptcy administrators (*konkursförvaltare*). The administrator's only task is to manage the estate. The bankruptcy application is assessed, the bankruptcy decision is taken, and the bankruptcy itself is processed in bankruptcy proceedings before the district court (*tingsrätt*). During the bankruptcy proceedings the court decides a number of issues: it determines how to distribute the estate, for example, or whether debts must be proved. There are other steps that take place in court, such as the administration of an oath whereby the debtor swears to the inventory of the assets. The administrator is monitored by the Enforcement Authority (*Kronofogdemyndigheten*).

BUSINESS REORGANISATION

General

A trader who is experiencing payment difficulties may be permitted by a court decision to undergo a special procedure in order to reorganise his or her business (*företagsrekonstruktion*). A business reorganisation officer (*rekonstruktör*) is appointed by the court to investigate whether some or all of the debtor' s operations can continue and, if so how, and whether the conditions are right for the debtor to reach a financial settlement (*uppgörelse*) or composition (*ackord*) with the creditors. In carrying out his or her duties, the business reorganisation officer must act in such a way as to ensure that the creditors' interests are not disregarded. A decision to reorganise a business does not formally restrict the debtor's control of his or her property.

DEBT RESTRUCTURING

General

Debt restructuring (*skuldsanering*) releases a debtor from all or part of his or her liability to pay the debts that fall within the scope of the restructuring operation. Since November 2016, there have been two kinds of debt restructuring in Sweden: debt restructuring (*skuldsanering*) under the Debt Restructuring Act (*skuldsaneringslagen*); and business debt restructuring (*Fskuldsanering*) under the Business Debt Restructuring Act (*skuldsaneringslagen för företagare*). Both kinds are explained below.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

1 Who may insolvency proceedings be brought against?

BANKRUPTCY

Bankruptcy proceedings may be opened in respect of both legal and natural persons (including natural persons who do not engage in commercial activity).

BUSINESS REORGANISATION

Business reorganisation proceedings may be opened in respect of both legal and natural persons, provided that the person in question is a trader. Some legal persons are excluded from the Act, such as banks, credit market firms, insurance companies, and securities trading companies.

DEBT RESTRUCTURING

Debt restructuring may be granted to natural persons (including natural persons who engage in private commercial activity (*enskild näringsverksamhet*)).

Debt restructuring applications are handled by the Enforcement Authority at first instance.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

Business debt restructuring may be granted to a natural person who is:

1. a trader who has been engaged in a commercial activity, if his or her debt burden arises for the most part from that activity;
2. a trader who is engaged in a commercial activity, if the debts arising from that activity can be properly paid off, or if the inability to pay off those debts is only temporary; or
3. a member of the family of an entrepreneur, if that family member's debt burden arises for the most part out of the entrepreneur's commercial activity.

'Member of the family' (*närstående*) means a spouse, cohabiting partner, parent, sibling or child, or the children of the spouse or cohabiting partner.

Business debt restructuring applications are handled by the Enforcement Authority at first instance.

2 What are the conditions for opening insolvency proceedings?

BANKRUPTCY

For bankruptcy proceedings to be opened the debtor must be in default. 'Default' (*obestånd, insolvens*) means that the debtor cannot duly pay his or her debts and that the inability to pay is not merely temporary. A statement by a debtor to the effect that is he or she is insolvent will be accepted if there is no particular reason for not doing so. There are also certain presumptions regarding proof of default. For example, the debtor must be regarded as insolvent, unless the contrary is shown, if enforcement proceedings have been brought under Chapter 4 of the Enforcement Code (*utsökningsbalken*) and have resulted in a finding, within the six months prior to the bankruptcy application, that the debtor did not have sufficient assets to make full payment of the claim being enforced. The same applies if the debtor has declared that he or she has suspended payments.

A bankruptcy application may be submitted by the debtor or by a creditor.

If there are probable grounds for approving the bankruptcy application, and there is reason to believe that the debtor might remove some property, the court may order sequestration (*kvarstad*) of the debtor's property pending assessment of the application. The court also has power to impose a travel ban.

The district court must publish the decision declaring bankruptcy immediately. The decision takes effect at once, in that the debtor loses control of his or her property as soon as the decision is announced, but there is some protection for the legitimate expectations of third parties. Please also see the information provided under the heading 'What powers do the debtor and the insolvency practitioner have, respectively?'

A decision by the district court declaring a bankruptcy or dismissing a bankruptcy application may be appealed against to a higher court.

BUSINESS REORGANISATION

An application for business reorganisation may be submitted by the debtor or by a creditor. A decision allowing the reorganisation of a business can be taken only if it can be accepted that the debtor cannot pay debts that have fallen due or will soon be unable to pay them. A decision allowing business reorganisation may not be taken if there are no reasonable grounds for supposing that the objective of business reorganisation can be achieved. An application submitted by a creditor may be approved only with the consent of the debtor.

If an application by a debtor is considered admissible, the court must assess it immediately, unless the debtor's application was submitted following an application by a creditor and the court has decided that a hearing must be held to examine it. If an application by a creditor is considered admissible, the court must set a date for a hearing to examine it. The hearing must be held within two weeks of the application being made to the court. It may be held at a later date if there are special grounds for doing so, but in any event within no more than six weeks.

If the application is approved, the court must appoint a business reorganisation officer at the same time. More than one business reorganisation officer may be appointed if there are special grounds for doing so. Within one week of the decision to allow the reorganisation, the business reorganisation officer must notify all known creditors of the decision. A business reorganisation decision applies immediately unless otherwise determined by the court.

DEBT RESTRUCTURING

An application for a restructuring of debt may be submitted by a debtor. If the application is not dismissed as inadmissible or unfounded, a decision initiating the debt restructuring must be taken as quickly as possible. An application may be dismissed as unfounded, for example, if it emerges from the application or from another available report that the conditions for debt restructuring are not fulfilled.

A restructuring of debt may be allowed if:

1. the debtor is a natural person whose main interests are in Sweden;
2. the debtor cannot duly pay his or her debts and it can be accepted, having regard to all the circumstances of the case, that this inability to pay will continue into the foreseeable future (the debtor must be considered insolvent); and
3. it is reasonable to do so in view of the debtor's personal and financial circumstances.

The following restrictions apply:

1. a debt restructuring may not be allowed if the debtor is under an order disqualifying him or her from carrying on a business (*näringsförbud*);
2. if the debtor is a trader, a debt restructuring may be allowed only if the financial circumstances of the business can be investigated easily; and
3. if the debtor has previously been allowed a debt restructuring, a fresh debt restructuring may be allowed only if there are special grounds for doing so.

If a decision is taken to initiate the debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the debt restructuring process.

A decision initiating the debt restructuring process may be appealed against within three weeks of the decision date.

Following the initiating decision, no attachment of property (*utmätning*) is possible to enforce claims that arose prior to that decision, until the question of debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

An application for a restructuring of business debt may be submitted by a debtor. If the application is not dismissed as inadmissible or unfounded, a decision initiating the business debt restructuring must be taken as quickly as possible. An application may be dismissed as unfounded, for example, if it emerges from the application or from another available report that the conditions for business debt restructuring are not fulfilled.

A restructuring of business debt may be allowed if:

1. the debtor's main interests are in Sweden;
2. the debtor cannot duly pay his or her debts and it can be accepted, having regard to all the circumstances of the case, that this inability to pay will continue into the foreseeable future (the debtor must be considered insolvent); and
3. it is reasonable to do so in view of the debtor's personal and financial circumstances.

The following restrictions apply:

1. a business debt restructuring may not be allowed if the debtor is under an order disqualifying him or her from carrying on a business;
2. a business debt restructuring may not be allowed if the debtor is a trader who is conducting or has conducted his or her business in an irresponsible fashion;
3. a business debt restructuring may not be allowed if the debtor has a quarterly margin for payment of less than one seventh of the price base amount (*prisbasbeloppet*) laid down in Sections 6 and 7 of Chapter 2 of the Social Insurance Code (*socialförsäkringsbalken*) (approximately SEK 6 300 in 2016); and
4. if the debtor has previously been allowed a debt restructuring, a fresh debt restructuring may be allowed only if there are special grounds for doing so.

If a decision is taken to initiate the business debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the business debt restructuring process.

A decision initiating the business debt restructuring process may be appealed against within three weeks of the decision date.

Following the initiating decision, attachment of property is not possible for claims that arose prior to that decision, until the question of business debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

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?

BANKRUPTCY

Unless otherwise provided for in special exemption rules for legal acts performed by the debtor or any other party immediately following the decision opening the bankruptcy, the bankruptcy estate includes all property that belonged to the debtor when the bankruptcy decision was published, or which accrues to the debtor during the bankruptcy process, and which is of capable of serving for the enforcement of claims. Any property that may be added to the bankruptcy estate by means of recovery of claims is also included. For natural persons, there are special rules that apply to wages and other property that the debtor requires for his or her subsistence. The debtor may retain some of this property.

BUSINESS REORGANISATION

The business reorganisation officer must notify all known creditors of the business reorganisation decision within a week of the decision date. Among other things, a preliminary inventory of the debtor's assets and liabilities must be enclosed with the notification. It follows that all assets are covered by the process. It should, however, be emphasised that a business reorganisation may conclude with a public composition with creditors, but this is not compulsory.
Any claims based on an agreement concluded by the debtor during a business reorganisation process with the business reorganisation officer's consent enjoy a general preference (*allmän förmånsrätt*). An example of such an agreement might be an agreement concerning the financing of the business that is concluded with the business reorganisation officer's consent during the reorganisation process.

DEBT RESTRUCTURING

A decision approving a debt restructuring must set out a payment plan. The payment plan runs for five years unless there are substantial grounds for setting a shorter duration. The payment plan starts to run on the date of the decision approving the restructuring. But the debtor starts to make payments from the date of the decision initiating the process, and the period for which the initiating decision has applied must usually be deducted from the duration of the payment plan.
The amount that the debtor has to pay is determined in such a way that the debt restructuring applies to all the debtor's assets and revenues following deduction of what must be retained for the subsistence of the debtor and the debtor's family. A reservation may also be made for the payment of a claim not covered by the debt restructuring.
If the debtor's financial circumstances improve considerably following the debt restructuring decision, and this is due to unforeseen circumstances, the creditors and the debtor may apply to have the decision reassessed.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

A payment plan must be laid down in a business debt restructuring case. The payment plan runs for three years. The payment plan starts to run on the date of the decision approving the restructuring. But the debtor starts to make payments from the date of the decision initiating the process, and the period for which the initiating decision has applied must usually be deducted from the duration of the payment plan.
The amount that the debtor has to pay is determined in such a way that the business debt restructuring applies to all the debtor's total and revenues following deduction of what must be retained for the subsistence of the debtor and of the debtor's family. A reservation may also be made for the payment of a claim not covered by the business debt restructuring.
If the debtor's financial circumstances improve considerably following the business debt restructuring decision, the creditors and the debtor may apply to have the decision reassessed.

4 What powers do the debtor and the insolvency practitioner have, respectively?

BANKRUPTCY

Once a bankruptcy decision is announced, the debtor loses control of any property pertaining to the bankruptcy estate. The debtor may not enter into any obligations that might be invoked during the bankruptcy. There are some exemptions. During the bankruptcy process the bankruptcy estate is represented by the administrator. The administrator is appointed by the district court, and must have the special knowledge and experience required for the task, and be suitable for the task in other respects. A person employed by a court may not be appointed as an administrator. A person may not be appointed as an administrator if they have a conflict of interest.

BUSINESS REORGANISATION

A business reorganisation officer must have the special knowledge and experience required for the task, must have the confidence of the creditors, and must be suitable for the task in other respects.
The business reorganisation officer investigates the debtor's financial standing and, in consultation with the debtor, draws up a plan setting out how the aims of the reorganisation are to be achieved. The plan must be supplied to the court and to the creditors. The business reorganisation officer may engage expert assistance.
The debtor is required to provide the business reorganisation officer with all information concerning his or her financial circumstances that is relevant to the restructuring of the business. The debtor must follow the business reorganisation officer's instructions concerning the manner in which the business is to be run. There are some legal acts that the debtor cannot perform without the business reorganisation officer's consent. These include paying debts that arose prior to the decision, undertaking new obligations, and transferring or pledging property of substantial importance for the debtor's business. If the debtor fails to fulfil these obligations, however, the legal act in question remains valid.

DEBT RESTRUCTURING

No administrator is appointed. During the debt restructuring process the debtor retains control of his or her property.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

No administrator is appointed. During the debt restructuring process the debtor retains control of his or her property.

5 Under which conditions may set-offs be invoked?

BANKRUPTCY

A creditor who has a claim on the debtor that can be asserted during the bankruptcy can set that claim off against a claim that the debtor had on the creditor at the time when the bankruptcy decision was announced. This does not apply if the set-off has been excluded from the bankruptcy owing to the nature of the claims in question. There are special rules that apply to conditional claims. There are also exemptions among other things for recently acquired claims (largely corresponding to the provisions on recovery to the estate).
With regard to financial markets, there are special provisions to the effect that netting agreements and similar arrangements relating *inter alia* to financial instruments will apply with respect to the bankruptcy estate and the creditors.

BUSINESS REORGANISATION

Anyone who had a claim on the debtor when the application for business reorganisation was submitted may set that claim off against a claim that the debtor had on the creditor at that time, even if the claim has not fallen due for payment. This does not apply if the set-off is excluded owing to the nature of the claims in question or is otherwise excluded by provisions of the Business Reorganisation Act. There are also exemptions among other things for recently acquired claims (largely corresponding to the provisions on recovery to the estate).
With regard to financial markets, there are special provisions to the effect that netting agreements and similar arrangements relating *inter alia* to financial instruments will apply with respect to the bankruptcy estate and those creditors whose claims are covered by a public composition with creditors.

DEBT RESTRUCTURING

There are no special rules concerning set-off.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

There are no special rules concerning set-off.

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

BANKRUPTCY

The Bankruptcy Act does not contain any general rules on whether the bankruptcy estate is bound by agreements entered into by the debtor. In principle the estate is an independent legal person, and has no liability for any obligations that might arise from such an agreement. A bankruptcy estate may choose to perform agreements entered into by the debtor if doing so is conducive to the winding up of the estate. This will usually be conditional upon the consent of the counterparty.

There are special provisions in other legislation, such as the Sales Act (*köplagen*) and the Act on Trade in Financial Instruments (*lagen om handel med finansiella instrument*). According to the Sales Act, the bankruptcy estate may choose to perform an agreement if one of the parties has been placed in bankruptcy. The counterparty may ask the estate to notify it in good time if it wishes to perform the agreement.

BUSINESS REORGANISATION

If, prior to the decision on business reorganisation, the debtor's counterparty had the right to cancel an agreement owing to the occurrence or prospect of a dispute relating to payments or performance in some other respect, the counterparty is prevented from cancelling the agreement by reason of that dispute once the decision has been taken, if the debtor requests in good time and with the consent of the business reorganisation officer that the agreement in question be performed. At the request of the counterparty the debtor must notify the counterparty in good time whether the agreement is to be performed,. If an agreement is to be performed, there are special rules governing the manner of performance. There are also special provisions in the Sales Act, and special rules governing matters such as contracts of employment and financial instruments.

DEBT RESTRUCTURING

There are no special rules concerning the effect of a debt restructuring on a current contract.

Please also see 'What are the conditions for, and the effects of closure of insolvency proceedings?'

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

There are no special rules concerning the effect of a business debt restructuring on a current contract.

Please also see 'What are the conditions for, and the effects of closure of insolvency proceedings?'

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

BANKRUPTCY

Once the bankruptcy decision has been announced, property belonging to the bankruptcy estate may not generally be attached (*utmäta*) in order to enforce any claims against the debtor. This applies automatically once the bankruptcy has been opened. There are some exemptions that apply to claims that have a certain level of preference. Any attachment (*utmätning*) that takes place contrary to this ban is null and void. Property may be attached irrespective of the bankruptcy if there is a right of pledge (*panträtt*) over the property in question for the satisfaction of the claim.

If attachment has taken place before the bankruptcy decision is announced, enforcement may as a general rule continue irrespective of the bankruptcy process. There are some exceptions.

BUSINESS REORGANISATION

While the business reorganisation is in progress, no attachment or other enforcement under the Enforcement Code may take place against the debtor. There are exceptions, for example where the creditor has a right of pledge or a right of retention (*retentionsrätt*) for the satisfaction of the claim. No assistance can be given under the Act on Hire-Purchase Agreements between Traders (*lagen (1978:599) om avbetalningsköp mellan näringsidkare m.fl.*). During the business reorganisation process, no decisions may be taken imposing sequestration (*kvarstad*) or lien (*betalningsäkring*).

DEBT RESTRUCTURING

Following the initiating decision, no attachment of property is possible to enforce claims that arose prior to that decision, until the question of debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

If the debtor is declared bankrupt, the debt restructuring application lapses.

If an application for the negotiation of a public composition with creditors is admitted for consideration after the debtor has applied for a debt restructuring, the debt restructuring proceedings must be suspended. If the composition is confirmed, the debt restructuring application lapses.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

Following the initiating decision, no attachment of property is possible to enforce claims that arose prior to that decision, until the question of business debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

If the debtor is declared bankrupt, the business debt restructuring application lapses.

If an application for the negotiation of a public composition with creditors is admitted for consideration after the debtor has applied for a business debt restructuring, the debt restructuring proceedings must be suspended. If the composition is confirmed, the business debt restructuring application lapses

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

BANKRUPTCY

If there is an ongoing lawsuit between the debtor and another party concerning property belonging to the bankruptcy estate, the estate may pursue the proceedings in the debtor's place. If the estate does not take the debtor's place, the property is considered to fall outside the estate. If the proceedings have been brought against the debtor to satisfy a claim that can be asserted in the bankruptcy proceedings, the bankruptcy estate may join the lawsuit on the debtor's side. There are further provisions concerning this procedure.

BUSINESS REORGANISATION

Enforcement of claims is in principle prohibited during the business reorganisation process, but this does not prevent an ongoing lawsuit between the debtor and another party from continuing and indeed from being concluded.

DEBT RESTRUCTURING

Please see under 'What effect does an insolvency proceeding have on proceedings brought by individual creditors?'

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

Please see under 'What effect does an insolvency proceeding have on proceedings brought by individual creditors?'

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

BANKRUPTCY

The creditors have no formal role in the bankruptcy procedure. The administrator must consult creditors that are particularly affected if there is nothing to prevent this. The creditor are also entitled to receive information from the administrator, and to attend the taking of the oath, for example. A creditor may request that a supervisor (*granskningsman*) be appointed to monitor the administration of the bankruptcy estate on the creditor's behalf.

BUSINESS REORGANISATION

When a court decides in favour of a business reorganisation, it must set a date for a creditors' meeting, which takes place in court. The meeting must take place within three weeks of the date of the business reorganisation decision, or within a longer period if that is unavoidable.

At the creditors' meeting, the creditors have the opportunity to express their opinions as to whether the business reorganisation should continue. If a creditor so requests, the court sill appoint a creditors' committee from among the creditors. The committee consists of no more than three members. In some cases, employees will also have the right to appoint a representative as an additional member of the committee. The court may appoint further members if there are particular grounds for doing so. The business reorganisation officer must consult the creditors' committee with regard to matters of importance if there is nothing to prevent this.

DEBT RESTRUCTURING

Please see under 'What are the rules governing the lodging, verification and admission of claims?'

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

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

BANKRUPTCY

During bankruptcy, the assets form a bankruptcy estate which is administered for the benefit of the creditors (see above). The estate is managed by one or more bankruptcy administrators. As a general rule, property from the estate must be sold off as quickly as reasonably possible. If the debtor has been operating a business, the administrator may under certain conditions keep the business running on behalf of the bankruptcy estate.

BUSINESS REORGANISATION

During business reorganisation, the debtor does not lose control of his or her assets.

DEBT RESTRUCTURING

No administrator is appointed.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

No administrator is appointed.

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?

BANKRUPTCY

Swedish bankruptcies can be divided into two categories, bankruptcies without proof of debts (*bevakning*) and bankruptcies with proof of debts. There is no proof of debts unless otherwise determined. This is because creditors without a preferred claim do not usually receive anything in the event of bankruptcy. The district court may, upon request by the administrator, decide that debts are to be proved. This will be done if it can be assumed that claims without preference will receive some payment upon distribution during the bankruptcy procedure. Where it is decided that the proof-of-debt procedure should take place, claims that can be asserted during the bankruptcy proceedings must generally be proved in order for the creditor to receive anything from the distribution. Any entitlement to preference also has to be proved. Where a creditor has a right of pledge or retention over property, however, there is no need to prove the debt for the creditor to be entitled to payment from the property in question.

The fact that the debtor loses control of his or her property means that the debtor is prevented from entering into any obligations that could be asserted during the bankruptcy proceedings. If the debtor undertakes or incurs any obligations following the start of the bankruptcy proceedings, those obligations cannot generally be proved during the bankruptcy. The established case-law is that, in some cases, the debtor may resume control over a certain asset if the administrator expressly refrains from claiming it.

The bankruptcy estate, represented by the administrator, may assume rights and responsibilities, for example by entering into an agreement. These give rise to claims against the estate itself (*massafordringar*). In principle, claims on the estate itself have preference over the ordinary bankruptcy claims (*konkursfordringar*). The administrator's remuneration and other similar debts (known as bankruptcy costs, *konkurskostnader*) must, however, come out of the bankruptcy estate before any other debts that the estate has incurred. If the bankruptcy costs cannot be taken out of the bankruptcy estate, they must generally be paid for by the State. In principle, the bankruptcy claims are satisfied only after the bankruptcy costs and the claims on the estate itself have been paid.

BUSINESS REORGANISATION

There are no general rules for the notification of claims in the event of business reorganisation. In a business reorganisation case, however, the court may, at the request of the debtor, decide to allow negotiations for a public composition with creditors (*offentligt ackord*). The creditor may need to submit his or her claims within the framework of the composition negotiations (please see below). Only those creditors whose claims arose before the application for business reorganisation was submitted participate in the composition negotiations. Nevertheless, not all creditors participate in these negotiations: for example, a creditor whose claim can be satisfied by set-off or who has a preferred claim does not participate. The business reorganisation officer draws up an inventory of the estate's assets and liabilities. If a person has a claim that has not been listed in the estate inventory or come to light in the meantime, and wishes to participate in the composition negotiations, they should submit the claim in writing to the business reorganisation officer no later than one week prior to the creditors' meeting.

Claims based on agreements entered into by the debtor with the consent of the business reorganisation officer during the business reorganisation enjoy a general preference.

DEBT RESTRUCTURING

A debt restructuring essentially covers all money claims against the debtor that arose before the date on which the initiating decision was announced. Creditors should therefore submit any claims that arose before the initiating decision and which are covered by the debt restructuring, because otherwise there is a risk that the debtor will be released from his or her liability to pay the debts in question (please see under 'What are the conditions for, and the effects of closure of insolvency proceedings?').

A debt restructuring does not, however, cover the following:

1. a claim for family maintenance, provided that the Social Insurance Agency (Försäkringskassan) or a foreign public body has not taken over the right of the eligible party to receive maintenance;

2. a claim in respect of which the creditor has a right of pledge or other right of preference pursuant to Section 6 or 7 of the Preference Act (förmånsrattslagen (1970:979)), or a right of retention, in so far as the security is sufficient to allow the claim to be satisfied;

3. a claim in respect of which the creditor obtained a right of preference pursuant to Section 8 of the Preference Act before the initiating decision was announced in respect of property on which the claim was to be enforced;

4. a claim which has not fallen due for payment and which is conditional upon the creditor providing consideration; or

5. a claim that is disputed.

If a claim is conditional, is not of a defined amount, or has not fallen due for payment, it may be decided that it falls outside the debt restructuring. If it can be accepted that a claim is groundless, it must be decided that it will not be covered by the debt restructuring.

Claims that arose following the initiating decision are not covered by the debt restructuring.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

A business debt restructuring essentially covers all money claims against the debtor that arose before the date on which the initiating decision was announced. Creditors should therefore report any claims that arose before the initiating decision and which are covered by the business debt restructuring, because otherwise there is a risk that the debtor will be released from his or her liability to pay the debts in question (please see 'What are the conditions for, and the effects of closure of insolvency proceedings?').

A business debt restructuring does not, however, cover the following:

1. *a claim for family maintenance, provided that the Social Insurance Agency or a foreign public body has not taken over the right of the eligible party to receive maintenance*;
2. *a claim in respect of which the creditor has a right of preference pursuant to Section 5 of the Preference Act (1970:979), in so far as the security is sufficient to allow the claim to be satisfied;*
3. *a claim in respect of which the creditor has a right of pledge or other right of preference pursuant to Section 6 or 7 of the Preference Act, or a right of retention, in so far as the security is sufficient to allow the claim to be satisfied*;
4. *a claim in respect of which the creditor obtained a right of preference pursuant to Section 8 of the Preference Act before the initiating decision was announced in respect of property on which the claim was to be enforced*;
5. *a claim which has not fallen due for payment and which is conditional upon the creditor providing consideration*; or
6. *a claim that is disputed*.

If a claim is conditional, is not of a defined amount, or has not fallen due for payment, it may be decided that the claim falls outside the business debt restructuring. If it can be accepted that a claim is groundless, it must be decided that it will not be covered by the business debt restructuring.

Claims that arose following the initiating decision are not covered by the business debt restructuring.

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

BANKRUPTCY

In general, only those claims that arose before the bankruptcy decision was announced may be asserted during bankruptcy. A claim may be asserted during bankruptcy even if it is conditional or has not fallen due for payment.

For those cases where no proof of debts takes place, there are no rules requiring the creditor to submit his or her claim in any particular way. In the event of bankruptcy without proof of debts, the administrator must on his or her own initiative ensure that any preferred claim receives its proper share in the distribution. There is nothing in principle to prevent a creditor from asserting his or her claim in vague terms until the timelimit for objecting to the proposed distribution.

If it can be assumed that the assets are sufficient for payment to creditors who do not enjoy preference, there must be a proof of debts (please see above regarding proof of debts). Where the district court decides that debts are to be proved, it will set a period of between four and ten weeks time for the submission of proof. The decision to call for proof of debts is published. The creditors must submit their claims in writing within the set period. If a creditor holds a right of pledge or retention right over property, they do not need to submit proof of the debt as part of this procedure in order to obtain payment from the property. If debts have been proved, and a creditor wishes to submit a claim or exercise a right of pledge after the timelimit for the submission of proof, they may submit proof *ex post* (*efterbevakning*). This must be done no later than the date on which the administrator establishes the proposed distribution, in other words before the proposal is submitted to the court and published. If a creditor does not submit proof of his or her claim, the creditor loses the opportunity to receive payment from the assets covered by the distribution decision. In principle, the creditor may subsequently receive payment in respect of his or her claim only if fresh resources become available (*ex post* distribution, *efterutdelning*).

BUSINESS REORGANISATION

As has been mentioned above, there is no general obligation for creditors to submit claims in the event of business reorganisation, but the creditor may need to submit his or her claims as part of any composition negotiations that take place. The business reorganisation officer must produce a business reorganisation plan. The plan usually shows how the financial situation of the debtor company can be resolved and how its operating results are to be improved. The content of the plan may, however, be adapted to the circumstances in individual cases.

In certain circumstances, there may be a public composition with creditors in the context of a business reorganisation. A request for composition negotiations is submitted by the debtor.

A request for composition negotiations must contain a composition proposal stating how much the debtor is offering by way of payment and when the payment is to be made, and whether any security has been lodged in respect of the composition and, if so, what it comprises. An inventory list of the estate's assets and liabilities must be attached.

If the request for composition negotiations is considered admissible, the court must give its decision to allow composition negotiations immediately. At the same time, the court must set a date for a meeting with creditors, to take place in court, issue a summons to that meeting, and publish the decision.

The debtor, the business reorganisation officer and the creditors have the opportunity to object to a claim that is to be covered by the composition. There are special rules governing the opportunity to participate in the composition negotiations on the basis of a claim not included in the estate inventory.

Only creditors whose claims arose before the application for business reorganisation was submitted may participate in the composition negotiations. Creditors whose claim may be satisfied by set-off or whose claim enjoys preference do not participate in the negotiations. Creditors who in the event of bankruptcy would have been entitled to payment only after other creditors do not participate either, unless the other creditors participating in the negotiations permit this.

At the request of any creditor the debtor must swear to the estate inventory at the creditors' meeting.

The creditors vote on the proposed composition at the creditors' meeting. A composition proposal that satisfies at least 50 % of the sum of claims is regarded as having been approved by the creditors if three fifths of those voting are in favour and their claims amount to three fifths of the total sum of claims carrying voting rights. If the percentage is lower, the composition proposal is approved if three quarters of those voting are in favour and their claims amount to three quarters of the total sum of claims carrying voting rights.

DEBT RESTRUCTURING

If a decision is taken to initiate the debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the debt restructuring process.

After the initiating decision, once sufficient information has been gathered, a debt restructuring proposal is drawn up. This is sent to all known creditors whose claims are covered by the proposal, with an invitation to them to submit their comments within a certain period. Failure by a creditor to submit comments does not prevent a decision to approve a debt restructuring.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

If a decision is taken to initiate the business debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the debt restructuring process.
After the initiating decision, once sufficient information has been gathered, a business debt restructuring proposal is drawn up. This is sent to all known creditors whose claims are covered by the proposal, with an invitation to them to submit their comments within a certain period. Failure by a creditor to submit comments does not prevent a decision to approve a business debt restructuring.

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

BANKRUPTCY

If the bankruptcy estate's assets are insufficient to pay the bankruptcy costs and the debts of the state itself, the bankruptcy must be written off (please see above regarding bankruptcy costs and debts of the estate). If the bankruptcy is written off (*avskrivas*), there is in principle no distribution to the creditors.
If the bankruptcy is not written off, the money in the bankruptcy estate that is not used to pay the bankruptcy costs and debts of the estate is distributed to the creditors. In principle, this distribution must be in accordance with the provisions of the Preference Act.
The Preference Act regulates the reciprocal entitlements of the creditors to receive payment in the event of bankruptcy. The following summarised information can be provided regarding the Preference Act.
A preference in relation to payment is either special or general. A special preference relates to certain property (examples being a right of pledge, a right of retention, or a mortgage (*inteckning*) on immovable property). A general preference relates to all property included in the debtor's bankruptcy estate (such as the costs incurred by creditors in order to place the debtor in bankruptcy, and the remuneration of a business reorganisation officer if the bankruptcy in question was preceded by a business reorganisation). A special preference takes precedence over a general preference. Any claims that do not enjoy a preference have the same rights among themselves. It may also have been provided in an agreement that a creditor is entitled to payment only after all other creditors have been satisfied (a subordinated claim, *efterställd fordran*).
A preference continues in being even if the claim is transferred or attached or otherwise passes to another party.
If a claim enjoys a special preference with respect to certain property, but the property in question is insufficient to satisfy the claim, the remainder is treated as a claim without preference.

BUSINESS REORGANISATION

There is no distribution in the event of business reorganisation, unless there is a public composition with creditors.
A public composition may provide that claims are to reduced and paid out in a specific way. The composition must give all creditors equal rights, and at least 25 % of the sum of the claims, unless a lower percentage is approved by all known creditors who would be covered by the composition, or if there are particular grounds for accepting a lower percentage. The prescribed minimum distribution must be paid out within one year following the approval of the composition, unless all known creditors accept a longer payment period. A composition may also provide that the debtor is only given respite in payments or other special remission.

DEBT RESTRUCTURING

All claims covered by a debt restructuring have equal rights. A claim may, however, be given less favourable rights with the consent of the creditor in question, or may be paid out before other claims if the sum available at distribution is small and it is reasonable to do so having regard to the scale of the debts and other circumstances.
Provisions governing claims are laid down in the decision to allow the debt restructuring.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

All claims covered by a business debt restructuring have equal rights. A claim may, however, be given less favourable rights with the consent of the creditor in question, or may be paid out before other claims if the sum available at distribution is small and it is reasonable to do so having regard to the scale of the debts and other circumstances.
Provisions governing claims are laid down in the decision to allow the debt restructuring.

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

BANKRUPTCY

If the debtor agrees to pay his or her debts, or has reached another agreement with the creditors (a voluntary agreement, *frivillig uppgörelse*), the district court must decide to discontinue the bankruptcy. In cases of bankruptcy with proof of debts, a bankruptcy may also be concluded by a decision approving a composition (*ackord i konkurs*). In other cases, the bankruptcy is concluded by writeoff (*avskrivning*, if the assets are insufficient to pay for the bankruptcy costs and claims on the estate itself) or by distribution to the creditors.
Bankruptcy does not release a natural person from liability to pay their debts (the rules on debt restructuring are different). The debts that have not been paid will therefore remain following the bankruptcy (but not if they are covered by a voluntary agreement or composition with creditors).
A legal person is dissolved following bankruptcy (the provisions governing this can be found in the legislation on the right to form associations). This means that in principle the creditors cannot assert any outstanding claims against a legal person following bankruptcy.

BUSINESS REORGANISATION

If a public composition is concluded, it is binding upon all creditors, both known and unknown, who were entitled to participate in the composition negotiations. A creditor who in the event of bankruptcy would have been entitled to payment after the other creditors loses his or her entitlement to payment from the debtor, unless all creditors who were entitled to participate in the composition negotiations are satisfied in full by the composition. A creditor with a preference in respect of certain property is bound by the composition in respect of amounts that cannot be taken out of that property.

DEBT RESTRUCTURING

A debt restructuring decision releases the debtor from liability to pay the debts covered by the debt restructuring in so far as they are reduced. The debt restructuring also releases the debtor from liability to pay unknown debts in the case, unless they are debts that cannot be covered by debt restructuring.
A debt restructuring means that entitlement to interest or penalties on arrears in respect of a claim covered by the restructuring lapses in respect of the period after the date on which the initiating decision was announced.
A debt restructuring has no impact on the rights of a creditor in relation to a guarantor or anyone else who is liable for the debt in question in addition to the debtor.
A decision approving a debt restructuring must set out a payment plan. The payment plan runs for five years unless there are substantial grounds for setting a shorter duration. The payment plan starts to run on the date of the decision approving the restructuring. When the expiry date of the payment plan is being set, the period for which the decision initiating the process has applied has usually to be deducted from the duration of the plan, unless there are grounds for deducting a shorter period in view of the debtor's actions following the initiating decision.

A debt restructuring decision may be amended or cancelled in certain circumstances. At the request of a creditor whose claim is covered by the debt restructuring, the debt restructuring decision may be cancelled or, in the cases referred to in points 6 and 7, amended, if:
1. the debtor has been dishonest to the creditor;
2. the debtor has deliberately obstructed the bankruptcy procedure or an enforcement measure;
3. the debtor has secretly favoured a certain creditor in order to influence the decision relating to the debt restructuring;
4. the debtor has deliberately submitted incorrect information in his or her debt restructuring application or at another point in the processing of the case, to the detriment of the creditor;
5. the debtor has submitted incorrect information resulting in a decision by a public authority in relation to tax or duties covered by the debt restructuring, or has not submitted information despite having been required to do so and this has resulted in the taking of an erroneous decision or no decision at all;
6. the debtor does not comply with the payment plan and the deviation therefrom is substantial; or
7. the debtor's financial circumstances have improved considerably following the debt restructuring decision, and this is due to circumstances that could not have been foreseen when the decision was taken.
In the cases referred to in point 7, the application must be submitted within five years of the date of the initiating decision or, if a payment plan is to expire later, by no later than the plan's expiry date. In the event that a debt restructuring decision is amended, the duration of the payment plan may be set at a maximum of seven years.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

A business debt restructuring decision releases the debtor from liability to pay the debts covered by the debt restructuring in so far as they are reduced. The restructuring also releases the debtor from liability to pay unknown debts in the case, unless they are debts that cannot be covered by business debt restructuring.
A business debt restructuring means that entitlement to interest or penalties on arrears in respect of a claim covered by the restructuring lapses in respect of the period after the date on which the initiating decision was announced.
A debt restructuring has no impact on the rights of a creditor in relation to a guarantor or anyone else who is liable for the debt in question in addition to the debtor.
A decision approving a business debt restructuring must set out a payment plan. The payment plan runs for three years. It starts to run on the date of the decision approving the restructuring.
A debt restructuring decision may be amended or cancelled in certain circumstances. At the request of a creditor whose claim is covered by the debt restructuring, the debt restructuring decision may be cancelled or, in the cases referred to in points 6 and 7, amended, if
1. the debtor has been dishonest to the creditor;
2. the debtor has deliberately obstructed the bankruptcy procedure or an enforcement measure;
3. the debtor has secretly favoured a certain creditor in order to influence the decision relating to the debt restructuring;
4. the debtor has deliberately submitted incorrect information in his or her debt restructuring application or at another point in the processing of the case, to the detriment of the creditor;
5. the debtor has submitted incorrect information resulting in a decision by a public authority in relation to tax or duties covered by the business debt restructuring, or has not submitted information despite having been required to do so and this has resulted in the taking of an erroneous decision or no decision at all;
6. the debtor does not comply with the payment plan and the deviation therefrom is substantial; or
7. the debtor's financial circumstances have improved considerably following the debt restructuring decision.
In the cases referred to in point 7, the application must be submitted within three years of the date of the initiating decision or, if a payment plan is to expire later, by no later than the plan's expiry date. In the event that a business debt restructuring decision is amended, the duration of the payment plan may be set at a maximum of five years.

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

BANKRUPTCY

As is mentioned above, bankruptcy does not release a natural person from liability to pay his or her debts, while legal persons are dissolved following bankruptcy.
If resources should become available for distribution following bankruptcy, there is provision for *ex post* distribution.

BUSINESS REORGANISATION

For the effect of a public composition with creditors please see above. If a public composition has not been concluded and the debtor has not reached a voluntary agreement or other arrangement with the creditors, the claims remain outstanding following the end of the business reorganisation.

DEBT RESTRUCTURING

In certain circumstances, a creditor may have a debt restructuring reassessed after the debtor has completed the payment plan. Please see under 'What are the conditions for, and the effects of closure of insolvency proceedings?'.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

In certain circumstances, a creditor may have a business debt restructuring re-assessed once the debtor has completed the payment plan. Please see under 'What are the conditions for, and the effects of closure of insolvency proceedings?'.

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

BANKRUPTCY

The remuneration of the administrator and other similar debts (the bankruptcy costs), and other debts incurred by the bankruptcy estate itself, must come out of the bankruptcy estate before anything is distributed to the creditors. The bankruptcy costs in turn take precedence over the other claims on the estate itself. If they cannot be paid out of the estate, the bankruptcy costs are generally paid for by the State.

BUSINESS REORGANISATION

The business reorganisation officer (and the supervisor if any) is entitled to compensation for his or her work and for the expenditure required for the task. Their remuneration may not be higher than that which can be considered reasonable compensation for the task. At the request of the business reorganisation officer or of the debtor, the court will assess the business reorganisation officer's entitlement to compensation. A creditor whose claim is covered by a composition may also request such an assessment until the composition is implemented. The court costs and compensation for the business reorganisation officer and supervisor must be paid by the debtor.

DEBT RESTRUCTURING

During the debt restructuring process, the debtor usually makes payments to the Enforcement Authority, which then passes on the money to the creditors. The Enforcement Authority levies an annual fee on the debtor for its management of his or her payments.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

During the debt restructuring process, the debtor usually makes payments to the Enforcement Authority, which then passes on the money to the creditors. The Enforcement Authority levies an annual fee on the debtor for its management of his or her payments.

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

BANKRUPTCY

The rules on recovery to the bankruptcy estate (*återvinning till konkursbo*) are laid down in the Bankruptcy Act. The reference date for calculating the periods laid down in the recovery rules is usually the day before the day of the bankruptcy application.

An act can be reversed (*går åter*) if it improperly favoured a certain creditor over others, or if the creditors have been deprived of the debtor's property, or if the debtor's debts have increased, and if the debtor was insolvent or became insolvent as a result of the proceeding alone or as a result of the proceeding in combination with other factors, and the other party knew or should have known that the debtor was insolvent and what the circumstances were that rendered the legal act improper. The debtor's family members are deemed to have had the knowledge referred to in the first sentence unless it there is convincing evidence to show that they did not and could not have had such knowledge. If the act was performed more than five years before the reference date, it can be reversed only if it related to one of the debtor's family members.

Payment of a debt later than three months before the reference date using a method other than the customary means of payment, or in advance, or of an amount that appreciably worsened the debtor's financial status, can be reversed unless it can be regarded as ordinary in the circumstances. If the payment was made to one of the debtor's family members prior to that date but later than two years before the reference date, it can be reversed unless it is shown that the debtor was not insolvent and did not become insolvent as a result of the act in question.

There are special rules that govern things such as gifts, home-sharing and wages. Certain payments to the State are exempt from the recovery rules, such as tax payments.

The administrator may seek recovery by bringing an action before the ordinary courts or by objecting to debts that are being proved during the bankruptcy procedure. If the administrator chooses not to seek recovery, and there is no amicable settlement, a creditor may seek recovery by bringing an action in the ordinary courts.

In the event of recovery, the property that the debtor has disposed of reverts to the bankruptcy estate.

BUSINESS REORGANISATION

Once a decision on business reorganisation is announced, the provisions of the Bankruptcy Act concerning recovery in the context of bankruptcy will apply if a public composition has been concluded with creditors (please see the section on bankruptcy).

In the event recovery of a right of preference or a payment obtained by means of attachment is sought, the court may decide not to continue with the enforcement proceedings until further notice.

An action for recovery will be brought by the business reorganisation officer or by a creditor whose claim would have been covered by a public composition. The action must be brought before the creditors' meeting takes place, and no final decision can be taken on it until the question of public composition has been decided. A creditor who wishes to bring an action must notify the business reorganisation officer. If this has not been done, the creditor's case will not be heard.

In the event that a business reorganisation process ends without a public composition having been concluded, and the debtor is not placed in bankruptcy after an application is made within three weeks of the date on which the business reorganisation procedure ended, the application for recovery that has been brought must be dismissed.

Once the plaintiff's costs have been reimbursed, the proceeds of recovery accrue to the creditors covered by the public composition. A defendant who as a result of the plaintiff's action may have a claim against the debtor can participate in the composition negotiations on the basis of that claim, and has the right to deduct the amount due to him or her at distribution from the amount that he or she would otherwise have paid.

At the request of a creditor covered by a public composition or of the debtor, the court hearing recovery proceedings may order that assets due to the creditor under the preceding sentence be placed in special administration (*särskild förvaltning*). Any property placed in such special administration may be attached only if the composition has lapsed.

DEBT RESTRUCTURING

There are no special provisions regarding recovery.

BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

There are no special provisions regarding recovery.

Last update: 17/03/2017

Insolvency/bankruptcy - England and Wales

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against individuals, companies and various corporate entities, and partnerships.

Proceedings may be brought against any individual who has a debt and who either lives in England & Wales, has in the last three years lived or carried on business in England & Wales, or is present in England & Wales on the day that a bankruptcy petition is presented. There is no minimum age. Other than where a court judgment in respect of the debt has first been obtained, minimum debt levels apply for creditors who wish to wind a company up (£750) or who wish to make a natural person bankrupt (£5,000).

2 What are the conditions for opening insolvency proceedings?

Types of corporate insolvency include be winding up (voluntary or by court order), administration (which could lead to rescue/reorganisation or to winding up), administrative receivership, or voluntary arrangement.

Types of personal insolvency include bankruptcy (whether made on the petition of a creditor or an application of an individual), debt relief orders, or voluntary arrangement.

Any unsecured creditor, including government creditors, can petition the court that a company be wound up (compulsory liquidation) or put into administration. The debtor company itself can resolve to be wound up (voluntary liquidation). A debtor company may also petition the court that it be wound up.

At any point after a winding-up petition has been presented to the court, the court may appoint a provisional liquidator. Such appointments are generally made to protect the assets of the company ahead of the winding-up hearing. The powers of the provisional liquidator are set out in the court's order appointing them.

The company or its directors may appoint an administrator, as may a floating chargeholder. Such appointments are made outside of court.

For a company to enter administration it must be insolvent or likely to become so.
Compulsory liquidation may be on grounds that the company is unable to pay its debts, proven by an unsatisfied statutory demand for payment or an unsatisfied judgment. The court may also be asked to order that a company be wound up on the grounds that it is just and equitable to do so.
Administrative receivers may be appointed by floating charge holders to recover money owed to them.
Once appointed, the office-holder must notify all creditors of the insolvency. In corporate insolvency, the registrar of companies must be informed, who will update the company's record, which is searchable online for no charge.
A company voluntary arrangement may be proposed by a company, or by the office-holder in a liquidation or administration if either of those procedures has already commenced. Individual voluntary arrangements may be proposed by a natural person, and are permissible both before and after bankruptcy proceedings have commenced.
All voluntary arrangements are agreed by creditors by way of a vote in which 75% of those voting must approve. No minimum level of debt applies and there is no test of insolvency. The proposal to creditors must be made through a nominee, who becomes supervisor if the proposal is approved. The nominee may act when the proposal is submitted to them by the debtor.
Bankruptcy orders are normally made on the petition of a creditor or the debtor themselves. A trustee is appointed by virtue of the making of the order, and may act immediately.
In the case of a creditor's petition, the petition is presented to the court and is subject to a minimum debt of £5,000, although a joint petition may be presented by two or more creditors in which case the debts owed to each are aggregated. The debt must be unsecured. The petition must demonstrate that the debtor is unable to pay the debt, which must be shown through an unsatisfied statutory demand for payment, or by an unsatisfied judgment.
In the case of a debtor's application, the application is presented to an adjudicator, who is a person appointed by the Government. No minimum debt level applies but the debtor must be unable to pay their debts. There is no court involvement in the application, and there must be no other bankruptcy petition pending. The adjudicator must determine the application, and make an order if the conditions are met. A trustee is appointed by virtue of the bankruptcy order being made, and may act immediately.
Where a creditor has presented a bankruptcy petition, the court may, prior to the hearing of that petition, appoint an interim receiver to protect the assets of the debtor which have been identified as potentially at risk. The court will in most cases give specific instructions as to the remit of an interim receiver, but may also give a more general power to take immediate possession of the debtor's property.
An individual may apply for a debt relief order through an authorised intermediary if they are unable to pay their debts, they owe £20,000 or less to their creditors, have assets valued at no more than £1,000 (not including a reasonable car) and have a surplus income of less than £50 per month. The official receiver determines whether a debt relief order should be made, and if it is then a moratorium period (normally 12 months) is placed on the person's debts, during which time creditors may take no action to enforce or recover them. At the end of the moratorium the debts, with some exceptions, are discharged.

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?

In corporate insolvency, all property owned by the company, anywhere in the world is subject to the insolvency procedure. 'Property' is very widely defined in law.
In administration, any finance raised to fund the procedure has priority as an expense.
In voluntary arrangements, the proposal will set out how assets are to be dealt with, and the creditors have the opportunity to consider this before voting on whether to accept the proposal.
In bankruptcy, all property owned by the bankrupt individual anywhere in the world vests in the trustee, with some exceptions. Any property which is needed to meet the individual's domestic needs, or to allow them to carry out their employment or trade, does not form part of the bankruptcy estate. This may include a motor vehicle. If such property is deemed by the trustee to be worth more than the cost of a reasonable replacement, then the trustee may realise the property and provide such a replacement. Also any property which the bankrupt individual holds in trust for somebody else is not included in the bankruptcy estate.
The bankrupt individual's income does not form part of the estate, but the trustee may come to an agreement with the individual that a proportion of any surplus income they have after taking account of their reasonable domestic requirements be paid to the bankruptcy estate for the benefit of creditors. The trustee may make an application to the court for an order that this happen if agreement with the individual cannot be reached.
Any property which comes into the individual's possession whilst undischarged from the bankruptcy proceedings may be claimed by the trustee for the bankruptcy estate.
It is a criminal offence for a bankrupt individual to fail to notify their trustee of property which is comprised in the bankruptcy estate, or to borrow money or otherwise obtain credit of more than £500 without disclosure of the bankruptcy proceedings to the lender.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Insolvency office-holders must be licensed insolvency practitioners or official receivers (see below). Licenses can only be issued by a professional body that the government authorises to do so. Someone who acts as an insolvency practitioner when not licensed to do so commits a criminal offence and is liable to a fine or imprisonment.
To obtain a license, the applicant must pass exams and must have a certain number of hours of practical insolvency experience.
An insolvency practitioner must be a natural person.
The remuneration of an insolvency practitioner acting as an office-holder is set by agreement with the creditors. The insolvency practitioner may apply to court if they are unable to agree what they consider to be a reasonable rate of remuneration with the creditors. Creditors may also apply to court if they consider remuneration to be excessive.
Assets in a liquidation or administration are under the control of the insolvency office-holder.
All insolvency cases are under the general control of the court and affected parties, including the insolvency office-holder, may apply to the court if they think that their interests have been unfairly harmed.
In a voluntary arrangement, a debtor is free to deal with their assets, provided that this does not lead to them breaching the terms of their agreement with the creditors.
Assets in a bankruptcy vest in the trustee and may not be dealt with by the bankrupt individual. This does not apply to assets which are excluded from the bankruptcy estate or assets which come into the possession of the individual after the commencement of the proceedings, unless those assets come into the individual's possession prior to their discharge from the bankruptcy proceedings and are claimed by the trustee. Other than the ability of the trustee to claim acquired assets, the trustee's administration of the estate is not affected by the individual's discharge from the bankruptcy proceedings.
An official receiver is a statutory office-holder appointed by the Secretary of State. He or she may act as an office-holder in a compulsory liquidation or a bankruptcy. Official receivers' remuneration is not set by creditors but by statute.

5 Under which conditions may set-offs be invoked?

Set-off may occur in liquidation, administration and bankruptcy.
The set-off account includes mutual dealing as at the date of the insolvency.
The net amount is either an asset of the insolvency, or a debt owed to the creditor, as the case may be.
The parties cannot contract out of the application of set-off.

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

A liquidator or trustee may disclaim an unprofitable contract, ending the insolvent's interest in or liability for it (the counterparty may claim in the insolvency for losses/damages as a result of the insolvency). Otherwise, where the contract does not terminate on insolvency, the court may make an order discharging the obligations of the contract.
The continued provision of certain supplies such as utilities and communication and IT services considered 'essential', can be continued in the insolvency without the need to pay any arrears outstanding at the entry to insolvency.
Other than those essential supplies, suppliers can terminate contracts upon insolvency if their contract allows for it. Any goods or services unpaid for would give rise to a claim in the insolvency.
Ongoing contracts would not be directly affected by a voluntary arrangement although they would need to be considered as part of the proposal.

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

Liquidation and administration create a moratorium. Legal action cannot be taken against the company post commencement without the consent of the office-holder or permission of the court.
In a voluntary arrangement, any creditor bound by the agreement could not take legal action to pursue the debt because they are bound by the accepted agreement. A post-approval creditor could take such action if it was not paid.
Secured creditors are not automatically bound by voluntary arrangements.
If a bankruptcy petition has been presented or a bankruptcy application made by the debtor themselves, the court may stay any legal proceedings ongoing against the debtor's person or property or allow it to continue under such terms as the court thinks fit. No creditor of the bankrupt individual may commence any action against their person or property without the leave of the court whilst the individual is undischarged from bankruptcy proceedings.
Where a debtor intends to make a proposal to their creditors for an individual voluntary arrangement, they, or if they are subject to bankruptcy proceedings, the trustee or the official receiver, may make an application to the court for an interim order. This has the effect of allowing the court to stay any proceedings against the debtor's person or property and preventing such proceedings from being commenced. The interim order also prevents presentation of a bankruptcy order against a debtor.

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

Liquidation and administration create a moratorium. Pending actions at the date of the insolvency cannot be continued without the consent of the office-holder or permission of the court.
An unsecured creditor in a pending action at the approval of a voluntary arrangement could not continue such an action, as they would be bound by the terms of the voluntary arrangement, whether or not they themselves voted to approve it. Secured creditors are not bound by the terms of a voluntary arrangement unless they choose to be.

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

Creditors participate in insolvency proceedings though creditor meetings and other decision processes. They may also form a committee and elect its members. Office-holders other than official receivers must update creditors on the progress of cases every 6 or 12 months, depending on the procedure.
Decisions may include appointment or removal of the office-holder, agreement of remuneration of the office-holder, formation of a committee, consideration of a voluntary arrangement proposal, or any other decision which the office-holder determines should require input from the creditors.

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

The voluntary arrangement proposal may make provision for the supervisor to deal with the debtor's assets.
In a bankruptcy, property vests in the trustee upon appointment without any need for conveyance, assignment, or transfer. It is the duty of the trustee to get in, realise, and distribute the bankrupt's property to creditors.
Assets in a liquidation or administration are under the control of the insolvency office-holder.

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?

In corporate insolvency, all debts, liabilities, or torts owed by the company prior to the onset of insolvency, including contingent debts can be claimed in the insolvency. Debts payable in the future may also be claimed but discounted to present values.
Liabilities arising from certain criminal actions (such as drug trafficking) are not provable in administration or liquidation.
Liabilities incurred after the commencement of proceedings are considered 'expenses'. These are subject to their own hierarchy of payment but all must be paid before money can be distributed to creditors.
A voluntary arrangement proposal must make full disclosure of a debtor's or company's liabilities and will set out how creditors are to be paid. Debts incurred by the debtor or company after agreement of the proposal may not be claimed in the insolvency unless specific provision has been made for this.
Debts due at the date of the bankruptcy order or that become due in the future as a result of an obligation entered into prior to the bankruptcy may be claimed in bankruptcy proceedings. Fines, student loan debts, arrears of a debt due in family proceedings, and debts due in respect of confiscation orders cannot be claimed in bankruptcy proceedings.

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

Creditors may submit a claim (proof of debt) at any point in proceedings. A claim must be submitted to be able to vote in any decision procedure or to receive a distribution.
In administration, liquidation or bankruptcy where a distribution is intended, the office-holder will write to all those creditors yet to prove their claims stating that a distribution will be made, inviting them to submit claims and fixing a last date to do so in order to be included in that distribution. An office-holder may deal with claims submitted after this date but is not obliged to do so.
If a creditor does not claim in time, it cannot disturb the distribution.
In voluntary arrangements, the requirement to submit a proof to the office-holder is satisfied by notification of the claim in writing.
https://www.gov.uk/government/publications/proof-of-debt-insolvency-form-425
https://www.gov.uk/government/publications/proof-of-debt-insolvency-form-637

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

The priority of distribution is
fixed chargeholders (from fixed charge assets)
expenses of the insolvency procedure
preferential debts (see below)

the prescribed part (corporate insolvency only)
floating charge-holders
unsecured creditors
shareholders (corporate insolvency only).
Some claims arising from employment are treated as preferential, including certain pension scheme debt.
The prescribed part is a ring-fenced fund drawn from floating charge assets and made available to unsecured creditors (maximum £600,000).
No claims are subordinated by law other than in bankruptcy proceedings where a debt due to a person who was the bankrupt individual's spouse or civil partner at the date of the bankruptcy ranks behind debts due to other creditors along with interest on those debts.
If a third party satisfies a debt of the debtor, that third party has a subrogated claim in the insolvency.

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

In a voluntary arrangement. creditors agree proposals made by the debtor or company if 75% by value vote in favour. Once the proposal has been agreed by creditors, it is implemented with an insolvency practitioner as supervisor. This does not require court approval, though the supervisor must report to the court if an interim order has been made. A party may apply to the court for review of the decision of creditors on whether to accept the proposal on the grounds of material irregularity. All unsecured creditors are bound by the arrangement.
If after approval the terms of the voluntary arrangement are not met by the debtor or company then the supervisor may present a petition to the court for bankruptcy or winding up.
Court approval is not needed for reorganisation plans, but an aggrieved party may apply to the court if they feel their interests have been unnecessarily harmed.
There are detailed procedural rules on the exit and closure of all insolvency proceedings.

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

Detailed rules on the closing of a case apply in all proceedings.
Creditors may claim funds distributed to them but not banked after the closure of the proceedings (such funds being held by the Government).
In voluntary arrangements the proposal will offer creditors a certain amount of repayment per £ of debt. The creditors are bound to accept this as payment in full if the proposal is accepted, so have no recourse for any part of that debt after the proceedings have been concluded.
In bankruptcy proceedings, debts are extinguished when proceedings are closed, other than those debts which do not form part of the proceedings.

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

There is a clear hierarchy of payment from funds realised from assets. Costs and expenses must be paid from the realisations before funds are returned to creditors.

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

If an insolvent has preferred a particular creditor in the approach to formal insolvency (i.e. paid them in preference to paying other creditors), or they had entered a transaction at an undervalue (i.e. sold something for less than its value or less than its worth), an office-holder may pursue the recipient for recovery of funds lost to the insolvency estate.
On application of the office-holder in a bankruptcy, liquidation or administration, a court may reverse either type of transaction and order that the recipient restore the position to what it would have been if the transaction had not taken place.
Claims to reverse preference payments must relate to transactions which occurred in the six months prior to appointment of the administrator, commencement of the winding-up, or presentation of the bankruptcy petition or the bankruptcy application, or two years in the case of a preference payment made to an associate.
Claims to reverse transactions at undervalue must relate to transactions made in the two years prior to those events, or in bankruptcy proceedings in the period of five years, provided that the individual was insolvent at the time, or became insolvent as a result of the transaction.
An office-holder in administration, liquidation, bankruptcy, or voluntary arrangement proceedings may apply to the court for an order reversing a transaction which defrauded creditors. Such an application may also be made by a victim of the transaction, with the leave of the court.
In administration and liquidation proceedings the office-holder may also take reparation action against any director of the company involved in trading with knowledge of insolvency which caused further losses to creditors, fraudulent trading, or misfeasance (misfeasance actions may also be brought by an official receiver or a creditor or contributory).
In a case where a petition for winding-up or bankruptcy is presented to the court, any dispositions of property made after presentation of the petition are void unless the court orders otherwise.

Last update: 08/07/2019

Insolvency/bankruptcy - Northern Ireland

1 Who may insolvency proceedings be brought against?

Insolvency proceedings may be brought against individuals, partnerships and companies (incorporated or unincorporated).
Proceedings may be brought against any individual who has a debt of at least £5,000 and who either lives in Northern Ireland, has in the last three years lived or carried on business in Northern Ireland, or is present in Northern Ireland on the day that a bankruptcy petition is presented. There is no minimum age.

2 What are the conditions for opening insolvency proceedings?

Corporate insolvency in Northern Ireland can be either liquidation (voluntary or by order of the High Court) or reorganisation (company voluntary arrangement or administration). Administration may be used as a precursor to winding-up procedure.
Any creditors (private or government) can apply to the Court that a company be wound up (compulsory liquidation) or put into administration.
The debtor company itself can resolve to be wound up (voluntary liquidation, which can be either solvent or insolvent, with solvency judged on the ability to pay all debts within 12 months). The debtor company may also petition the Court that it be wound up.
The Department for the Economy may apply to the Court that a company be wound up if it is in the public interest to do so. Such companies need not be insolvent.
At any point after a petition (from any party) has been presented to the Court for compulsory liquidation, the Court may appoint a provisional liquidator. Such appointments are generally made to protect the assets of the company ahead of the winding-up hearing. The powers of the provisional liquidator are as in the Court's order appointing him/her.

The company or its directors may appoint an administrator as may a floating chargeholder (such appointments being made outside of the Court).
For a company to enter administration it must be insolvent or likely to become so. Case law has found that 'likely' in this sense means more likely than not.
In a company voluntary arrangement, a company need not be insolvent.
Compulsory liquidation may be on grounds that it is unable to pay its debts (insolvency), with that inability proven by an unsatisfied statutory demand for payment or an unsatisfied judgment). The Court may put a company into liquidation on the grounds that it is just and equitable to do so.
As soon as the proceedings commence (either the company's resolution to wind up; the Court's order for administration or liquidation or the filing of a notice of appointment of an administrator with the Court (for those appointment not made by court order), the office-holder may act.
A company voluntary arrangement may be proposed by the company. It need not be insolvent for it to do so. A CVA may also be proposed by the office-holder in a liquidation or administration (if either of those procedures has already commenced).
Individual insolvency proceedings available are individual voluntary arrangements (IVA), debt relief orders (DROs), and bankruptcy orders (whether made on the petition of a creditor or the individual).
IVAs are proposed by the debtor and agreed by creditors by way of a vote in which 75% by value of debt owed of those voting must approve. No minimum level of debt applies and there is no test of insolvency. The proposal must be made through a nominee, who becomes supervisor if the proposal is approved by creditors. The nominee may act when the proposal is submitted to them by the debtor. An IVA may be proposed at a time that the debtor is subject to bankruptcy proceedings, and the bankruptcy may be annulled if the proposal is accepted by creditors. IVAs that are accepted by the creditors at vote are binding on all of the creditors.
DRO applications are made electronically to the official receiver by the debtor through an authorised intermediary. There is no court involvement in commencement of the proceedings. The debtor must have debts of no more than £20,000, assets of less than £1,000 (excluding a reasonable motor vehicle), and surplus income of £50 per month or less. The debtor must not be subject to any other insolvency proceedings and must not have entered into any transactions which disadvantaged creditors in the previous two years. The official receiver has a duty to determine the application when it is received, and so can act from that time.
Bankruptcy orders may be made on the petition of a creditor or the debtor themselves. The official receiver becomes receiver and manager on the making of the order. A trustee may be appointed subsequently and can act immediately on appointment.
In the case of a creditor's petition, the petition is presented to the Court and is subject to a minimum debt of £5,000 although a joint petition may be presented by two or more creditors in which case the debts owed to each are aggregated. The debt must be unsecured. The petition must demonstrate that the debtor is unable to pay the debt, which must be shown through an unsatisfied statutory demand for payment, or by an unsatisfied judgment.
Debtor's petitions are also presented to the Court. No minimum debt level applies but the debtor must be unable to pay their debts.
Where a bankruptcy petition has been presented, the Court may, prior to the hearing of that petition, appoint an interim receiver to protect the assets of the debtor which have been identified as potentially at risk. The court will in most cases give specific instructions as to the remit of an interim receiver, but may also give a more general power to take immediate possession of the debtor's property. Only the official receiver may be appointed as an interim receiver.

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?

In corporate insolvency, all property owned by the company, anywhere in the world is subject to the insolvency procedure. 'Property' is very widely defined in law.
In IVAs the debtor's proposal will set out how assets are to be dealt with, and the creditors have the opportunity to consider this before voting on whether to accept the proposal.
In DROs the value of assets is £1,000 or less (not including a reasonable vehicle) and these remain vested in the debtor.
In bankruptcy, all property owned by the bankrupt individual anywhere in the world vests in the trustee, with some exceptions. Any property which is needed to meet the individual's domestic needs or to allow them to carry out their employment or trade, does not form part of the bankruptcy estate. This may include a motor vehicle. If such property is deemed by the trustee to be worth more than the cost of a reasonable replacement, then the trustee may realise the property and provide such a replacement. Also any property which the bankrupt individual holds in trust for somebody else is not included in the bankruptcy estate.
The bankrupt individual's income does not form part of the estate, but the trustee may come to an agreement with the individual that a proportion of any surplus income they have after taking account of their reasonable domestic requirements be paid to the bankruptcy estate for the benefit of creditors. The trustee may make an application to the Court for an order that this happen if agreement with the individual cannot be reached.
Any property which comes into the individual's possession whilst undischarged from the bankruptcy proceedings may be claimed by the trustee for the bankruptcy estate.
It is a criminal offence for a bankrupt individual to borrow money or otherwise obtain credit of more than £500 without disclosure of the bankruptcy proceedings to the lender.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Other than in the case of the official receiver, office-holders must be licensed insolvency practitioners. Licences can only be issued by a professional body authorised by the Department to do so. Someone who acts as an insolvency practitioner when not licensed to do so commits a criminal offence and is liable to a fine or imprisonment.
To obtain a license, the applicant has to pass exams and must have a certain number of hours of practical insolvency experience.
An insolvency practitioner must be a natural person.
The remuneration of an insolvency practitioner acting as an office-holder is set by creditors. The IP can apply to the Court if he/she thinks the remuneration basis set by creditors is insufficient. Creditors may apply to the Court if they consider remuneration is excessive.
All insolvency cases are under the general control of the Court and affected parties (including the insolvency office-holder) may apply to the Court for directions.
In an IVA, a debtor is free to deal with their assets, provided that this does not lead to them breaching the terms of their agreement with the creditors.
In a DRO assets do not vest in an office-holder.
Assets in a bankruptcy vest in the trustee and may not be dealt with by the bankrupt individual. This does not apply to assets which are excluded from the bankruptcy estate or assets which come into the possession of the individual after the commencement of the proceedings, unless those assets come into the individual's possession prior to their discharge from the bankruptcy proceedings and are claimed by the trustee. Other than the ability of the trustee to claim acquired assets, this situation is not affected by the individual's discharge from the bankruptcy proceedings.
An official receiver is a statutory office-holder appointed by the Department. He may act as an office-holder in a compulsory liquidation or a bankruptcy. OR remuneration is not set by creditors; he is funded via a statutory formula as a percentage of assets realised/distributed

5 Under which conditions may set-offs be invoked?

Northern Ireland law provides that set-off occurs in liquidation, administration and bankruptcy.
The set-off account includes mutual dealing as at the date of the insolvency.
The net amount is either an asset (a book debt) of the insolvency, or a liability.
The parties cannot contract out of the application of set-off.

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

A liquidator or trustee may disclaim an unprofitable contract, ending the insolvent's interest/liability in it (the counterparty may claim in the insolvency for losses/damages as a result of the insolvency)
In corporate insolvency an insolvency office-holder is under no obligation to perform contracts entered into by the insolvent.
In corporate insolvency and bankruptcy, the continued provision of certain supplies (utilities and communication considered 'essential', can be continued in the insolvency without the need to pay any arrears outstanding at the entry to insolvency.
Other than essential supplies (see above), suppliers can terminate contracts upon insolvency (if their contract allows for it). Any unpaid goods/services would be a claim in the insolvency.
Ongoing contracts would not be directly affected by IVA or DRO proceedings, although they would need to be considered as part of an IVA proposal and may mean that an individual did not fit the criteria for a DRO.
In bankruptcy, unprofitable contracts may be disclaimed by the trustee. Otherwise, where the contract does not terminate on insolvency, the court may make an order discharging the obligations of the contract.

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

Liquidation and administration act to create a moratorium. Legal action cannot be taken against the company post commencement without the consent of the office-holder or permission of the Court.
In a company voluntary arrangement, any creditor bound by the agreement could not take legal action to pursue the debt (as they are bound by the accepted agreement). A post-approval creditor could take such action if they were not paid.
If a bankruptcy petition has been presented, the Court may stay any legal proceedings ongoing against the debtor's person or property or allow it to continue under such terms as the court thinks fit. No creditor of the bankrupt individual may commence any action against their person or property without the leave of the Court whilst the individual is undischarged from bankruptcy proceedings.
Where a debtor intends to make a proposal to their creditors for an IVA, they (or if they are subject to bankruptcy proceedings, the trustee or the official receiver) may make an application to the Court for an interim order. This has the effect of allowing the court to stay any proceedings against the debtor's person or property and preventing such proceedings from being commenced. The interim order also prevents presentation of a bankruptcy order against a debtor. The IVA proposal would include how the ongoing proceedings are to be disposed of, and if accepted all creditors would be bound by it.
The making of a DRO prevents creditors from taking action against the debtor in respect of their debt.

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

Liquidation and administration create a moratorium. Pending actions at the date of the insolvency cannot be continued without the consent of the office-holder or permission of the Court.
A creditor in a pending action at the approval of a CVA or IVA could not continue such an action, as they would be bound by the terms of the CVA or IVA (whether or not they themselves voted to approve it).
Creditors participate in insolvency proceedings though creditor meetings and other decision processes. They may also form a committee and elect its members. Office-holders other than the official receiver must update creditors regularly (every 6 or 12 months, depending on the procedure) on the progress of a case.

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

Creditors participate in insolvency proceedings though creditor meetings and other decision processes. They may also form a committee and elect its members. Office-holders other than the official receiver must update creditors regularly (every 6 or 12 months, depending on the procedure) on the progress of a case, and in bankruptcy and liquidation must hold a final meeting of creditors to report on the administration of the insolvency proceedings.
Decisions may include appointment or removal of the office-holder, agreement of remuneration of the office-holder, formation of a committee, consideration of a voluntary arrangement proposal, or any other decision which the office-holder determines should require input from the creditors.

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

The IVA proposal may make provision for the supervisor to deal with the debtor's assets.
In a DRO, assets are excluded from the proceedings, but the official receiver has power to make enquiries regarding the debtor's conduct and property.
In a bankruptcy, property vests in the trustee upon appointment without any need for conveyance, assignment, or transfer. It is the duty of the trustee to get in, realise, and distribute the bankrupt's property to creditors.

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?

In corporate insolvency, all debts/liabilities/torts owed by the company prior to the onset of insolvency can be lodged in the insolvency. Debts payable in the future may also be claimed but discounted to present values.
Liabilities arising from certain criminal actions (such as drug trafficking) are not provable in administration or liquidation.
Liabilities incurred after the commencement of proceedings are considered 'expenses'. These are subject to their own hierarchy of payment but all must be paid before money can be distributed to creditors.
An IVA proposal must make full disclosure of a debtor's liabilities and will set out how creditors are to be paid. Debts incurred by the debtor after agreement of the proposal may not be claimed in the insolvency unless specific provision has been made for this.
Certain debts are not included in DRO proceedings and must be paid by the debtor. These include fines, unpaid television licence fees, student loans, and secured debts. No creditor claims are made in a DRO because there is no distribution of assets.
Debts due at the date of the bankruptcy order or that become due in the future as a result of an obligation entered into prior to the bankruptcy may be claimed in bankruptcy proceedings. Fines, student loan debts, arrears of a debt due in family proceedings, and debts due in respect of confiscation orders cannot be claimed in bankruptcy proceedings.

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

Creditors may submit a claim (proof of debt) at any point in proceedings. A claim must be submitted to be able to vote in any meeting (or other decision procedure) or to receive a distribution.
In administration, liquidation or bankruptcy where a distribution is intended, the office-holder will write to all those creditors yet to prove their claims stating that a distribution will be made, inviting them to submit claims and fixing a last date to do so in order to be included in that distribution). An office-holder may deal with claims submitted after this date but is not obliged to do so.

In winding up by the court and bankruptcy, there is a standard form that must be submitted to prove. No other procedure has a standard form but the legal framework for other procedures states what must be included in a proof for distribution purposes.
If a creditor does not claim in time, it cannot disturb the distribution.
In voluntary arrangements, the requirement to submit a proof to the office-holder is satisfied by notification of the claim in writing.

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

Some claims arising from employment are treated as preferential, and payable after the expenses of the procedure are met but before the claims of floating charge holders and unsecured creditors.
No claims are subordinated by law other than in bankruptcy proceedings where a debt due to a person who was the bankrupt individual's spouse or civil partner.at the date of the bankruptcy ranks behind debts due to other creditors along with interest on those debts.
If a third party satisfies a debt of the debtor, that third party has a subrogated claim in the insolvency.

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

Creditors agree proposals made by the debtor (in a company voluntary arrangement – >75% approval, by value) or insolvency office-holder (administration, simple majority, or approval of all secured and a majority preferential creditors in cases where no return to unsecured creditors is thought likely).
In a CVA, once approved all unsecured creditors at the point of the proposals are bound by the arrangement.
Court approval is not needed for reorganisation plans, but an aggrieved party may apply to the court if they feel their interests have been unnecessarily harmed.
There are detailed procedural rules on the exit/closure of all corporate insolvency proceedings, both liquidation and reorganisation.
Once an IVA proposal has been agreed by creditors, it is implemented with an insolvency practitioner as supervisor. This does not require court approval, though the supervisor must report the result of the meeting held to approve the proposal to the court. A party may apply to the court for review of the decision of creditors on whether to accept the proposal on the grounds of material irregularity.
If after approval the terms of the IVA are not met by the debtor then the supervisor may present a petition for their bankruptcy.
In a DRO, debts are extinguished 12 months after the making of the order. There is no court involvement in this process.
In bankruptcy the trustee must send a final report to creditors before obtaining their release. If the trustee is not the official receiver then they must call a final meeting of creditors, where creditors may object to release. If this occurs then the trustee must apply for their release to the Department, otherwise the trustee obtains their release when they notify the registrar of companies that the final meeting has taken place.

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

Creditors may claim funds distributed to them (but not banked by them) after the closure of the proceedings (such funds being held by the Department.
Northern Ireland law provides when the proceedings close when the office-holder is released.
In IVAs the proposal will offer creditors a certain amount of repayment per £ of debt. The creditors are bound to accept this as payment in full if the proposal is accepted, so have no recourse for any part of that debt after the proceedings have been concluded.
In bankruptcy and DRO proceedings, debts are extinguished when proceedings are closed, other than those debts which do not form part of the proceedings.

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

Northern Ireland law provides a clear hierarchy of payment from funds realised from assets. Costs and expenses must be paid (from the realisations) before funds are returned to creditors.

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

If the insolvent has preferred a particular creditor in the approach to formal insolvency (i.e. paid them in preference to paying other creditors), or they had entered a transaction at an undervalue (i.e. sold something for less than its value or less than its worth), an office-holder may pursue the recipient.
On application of the office-holder in a bankruptcy, liquidation or administration, a court may reverse either type of transaction and order that the recipient restore the position to what it would have been if the transaction had not taken place.
Claims to reverse preference payments must relate to transactions which occurred in the six months prior to appointment of the administrator, commencement of the winding-up, or presentation of the bankruptcy petition, or two years in the case of a preference payment made to an associate.
Claims to reverse transactions at undervalue must relate to transactions made in the two years prior to those events, or in bankruptcy proceedings in the period of five years, provided that the individual was insolvent at the time, or became insolvent as a result of the transaction.
An office-holder in administration, liquidation, bankruptcy, or voluntary arrangement proceedings may apply to the court for an order reversing a transaction which defrauded creditors. Such an application may also be made by a victim of the transaction, with the leave of the Court.
In administration and liquidation proceedings the office-holder may also take reparation action against any director of the company involved in trading with knowledge of insolvency which caused further losses to creditors, fraudulent trading, or misfeasance.
In a case where a petition for winding-up or bankruptcy is presented to the court, any dispositions of property made after presentation of the petition are void unless the Court orders otherwise.

Last update: 03/02/2020

Insolvency/bankruptcy - Scotland

1 Who may insolvency proceedings be brought against?

Section 1 of the Bankruptcy (Scotland) Act 2016 ("**the 2016 Act**") provides that "the estate of a debtor may be sequestrated". This means that insolvency proceedings may be brought against various entities which are defined as a "debtor" in the 2016 Act. These include a living debtor, a deceased debtor or their executor or a person entitled to be appointed as executor to a deceased debtor, a trust, a partnership (including a dissolved partnership), a limited partnership (including a dissolved partnership) within the meaning of the Limited Partnerships Act 1907, a body corporate or an unincorporated body.
Insolvency proceedings may also be brought against companies (incorporated or unincorporated), in accordance with the Insolvency Act 1986 ("**the 1986 Act** ").

2 What are the conditions for opening insolvency proceedings?

Personal insolvency proceedings can be opened either by debtor application (including under the minimal asset process), or by a creditor petition at the sheriff court. A debtor can also enter into a trust deed, which is a voluntary form of insolvency proceeding between an individual and their creditors
Insolvency proceedings may be opened against a living debtor, upon their own application, in circumstances where:
the total amount of their debts (including interest) at the date their application is made is not less than £3,000;
an award of insolvency has not been made against the debtor in the period of 5 years ending on the day before the date the debtor application is made;
the debtor has obtained the advice of a money adviser;

the debtor has given a statement of undertakings (including an undertaking to pay to the trustee after the award an amount determined using the common financial tool);
the debtor is “apparently insolvent” or has, within the prescribed period, been granted a certificate for the insolvency of their estate or has granted a trust deed which is not a protected trust deed by reason of the creditors objecting or not agreeing,
and for the purposes of the application the debtor shall not be “apparently insolvent” by reason only that they have granted a trust deed or that they have given certain notice to their creditors.
Insolvency proceedings may further be opened against a living debtor on their own application, but under the “minimal asset process”, where certain criteria apply. The criterion are:
the debtor has been assessed by the common financial tool as not requiring to make a contribution to their insolvency, or has been in receipt of a prescribed payment for a period of at least 6 months ending with the day on which the application is made;
the total amount of the debtor’s debts (including interest) at the date the application is not less than £1,500, but no more than £17,000;
the total value of the debtor’s assets on the date of the application does not exceed £2,000;
the value of a single asset of the debtor does not exceed £1,000;
the debtor does not own land;
the debtor has been granted a certificate for insolvency of their estate;
in the period of 10 years ending on the day before the day on which the debtor application is made no insolvency award has been made against the debtor in pursuance of an application made by the debtor under the minimal asset process, and;
in the period of 5 years ending on the day before the day on which the debtor application is made no insolvency award has been made against the debtor in pursuance of an application made by the debtor other than under the minimal asset process, or a petition for their insolvency.
Insolvency proceedings can also be opened against a living debtor on the petition of a qualified creditor (or qualified creditors) if the debtor is “apparently insolvent”, and the qualified creditor has provided the debtor with a debt advice and information package (“**DAIP**”) no more than 12 weeks prior to presentation of the petition. A DAIP means the DAIP referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002 (“**the 2002 Act** ”).
A qualified creditor (as referred to above) is a creditor who, at the date of the presentation of the petition (or, as the case may be, the date the debtor application is made), is a creditor of the debtor in respect of liquid or illiquid debts other than contingent or future debts or amounts payable under a confiscation order, whether secured or unsecured, which amount (or of one such debt which amounts) to not less than £3,000. Qualified creditors means creditors who, at the said date, are creditors of the debtor in respect of such debts as aforesaid amounting in aggregate to not less than £3,000.
Given that the term “apparently insolvent” forms part of the criteria which must be satisfied for a debtor to make an application for their own insolvency, or when a creditor is petitioning for a debtor’s insolvency, it is important to understand what this means. Apparent insolvency in Scotland is constituted whenever:
a debtor’s estate is made insolvent, or they are adjudged bankrupt in England or Wales or Northern Ireland; or
not being a person whose property is for the time being affected by a restraint order, detained under or by virtue of a relevant detention power or subject to a confiscation or charging order, has given written notice to their creditors that they have ceased to pay their debts in the ordinary course of business; or
they have become subject to main proceedings in a Member State other than the United Kingdom;
the debtor grants a trust deed;
following the service on the debtor of a duly executed charge for payment of a debt the days of charge expire without payment (unless at the time of the occurrence the debtor was able and willing to pay their debts as they became due, or that but for the debtor's property being affected by a restraint order or being subject to a confiscation order or charging order, the debtor would at that time have been able to pay those debts as they became due);
a decree of adjudication of any part of the debtor's estate is granted either for payment or in security (unless at the time of the occurrence the debtor was able and willing to pay their debts as they became due, or that, but for the debtor's property being affected by a restraint order or being subject to a confiscation order or charging order, the debtor would at that time have been able to pay those debts as they became due);
a debt constituted by a decree or document of debt (as defined in section 10 of the 2002 Act) is being paid by the debtor under a debt payment programme under Part 1 of that Act and the programme is revoked (unless at the time of the occurrence the debtor was able and willing to pay the debtor's debts as they became due, or that, but for the debtor's property being affected by a restraint order or being subject to a confiscation order or charging order, the debtor would at that time have been able to pay those debts as they became due);
a creditor of the debtor, in respect of a liquid debt which amounts (or liquid debts which in aggregate amount) to not less than £1,500, has served on the debtor, by personal service by an officer of court, a demand in the prescribed form requiring him either to pay the debt (or debts) or to find security for its (or their) payment, and within 3 weeks after the date of service of the demand the debtor has not complied with the demand or intimated to the creditor, by recorded delivery, that he denies that there is a debt or that the sum claimed by the creditor as the debt is immediately payable.
Insolvency proceedings against a living debtor may also be opened by a temporary administrator or a Member State liquidator appointed in main proceedings
The trustee acting under a trust deed may open insolvency proceedings against a living debtor if, and only if, the debtor has failed to comply with any obligation imposed on them under the trust deed with which they could reasonably have complied, or with any instruction or requirement reasonably given to or made of them by the trustee for the purposes of the trust deed, or if the trustee avers in his petition that it would be in the best interests of the creditors that an insolvency award be made.
Insolvency proceedings may further be opened against a deceased debtor on the petition of a qualified creditor (or qualified creditors) of the deceased debtor, a temporary administrator, a Member State liquidator appointed in main proceedings, or a trustee acting under a trust deed. Insolvency proceedings can also be opened against a deceased debtor by debtor application which is made by the executor, or a person entitled to be appointed as executor on the estate.
In order for a debtor to enter a trust deed the minimum repayment period must be 48 months, unless an alternative arrangement is agreed. Trust deeds also require an individual to pay a set amount per month for the period of the deed. However a voluntary trust deed is not binding on any creditor who does not consent to its terms, and in order for it to become protected the minimum debts must be £5,000.
Corporate insolvency in Scotland can be through liquidation (voluntary or by order of the court), reorganisation (company voluntary arrangement (“**CVA**”) or administration), or receivership. Administration may be also be used as a winding-up procedure; not strictly a reorganisation process.
Any creditors (private or government) can apply to court seeking to have a company wound up (compulsory liquidation), or put into administration, while the company itself can resolve to be wound up (voluntary liquidation, which can be either solvent or insolvent, with solvency judged on the ability to pay all debts within 12 months). The company may also petition the court that it be wound up. Further, the Secretary of State may apply to court for a company to be wound up, if it is in the public interest to do so. Such companies do not need to be insolvent.

Compulsory liquidation may be on grounds that the company is unable to pay its debts (insolvency), with that inability proven by an unsatisfied statutory demand for payment or an unsatisfied judgment. The court may also ask that a company be put into liquidation on the ground that it is just and equitable to do so. At any point after a petition (from any party) has been presented to the court for compulsory liquidation, the court may appoint a provisional liquidator. Such appointments are generally made to protect the assets of the company ahead of the winding-up hearing. The powers of the provisional liquidator are set out in the court order appointing them.

For a company to enter administration it must be insolvent, or likely to become insolvent. Case law has found that 'likely' in this sense means more likely than not. The company or its directors may appoint an administrator, as may a floating chargeholder (such appointments being made outside of court).

A CVA may be proposed by the company. It need not be insolvent for it to do so. A CVA may also be proposed by the office-holder in a liquidation or administration (if either of those procedures has already commenced).

As soon as the proceedings commence (either the company's resolution to wind up; the court's order for administration or liquidation or the filing of a notice of appointment of an administrator with the court (for those appointment not made by court order), the office-holder may act.

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 whole of a debtor's property, with some exceptions, vests in the trustee as at the date of insolvency to form part of the insolvent estate. The trustee is vested in the estate and the debtor is divested. The trustee also acquires a right to the estate which vests in the debtor after the date of sequestration, but before the debtor's discharge. The whole estate of the debtor does not include any interest as tenant under a tenancy which is an assured tenancy within the meaning of Part II of the Housing (Scotland) Act 1988, or a protected tenancy within the meaning of the Rent (Scotland) Act 1984, in respect of which, by virtue of any provision of Part VIII of that Act, no premium can lawfully be required as a condition of the assignation, or a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001.

Property which does not vest in a trustee includes any property kept outwith a dwellinghouse in respect of which attachment is, by virtue of section 11(1) of the 2002 Act, incompetent, or any property kept in a dwellinghouse which is not a non-essential asset for the purposes of Part 3 of the 2002 Act. Property held on trust by the debtor for any other person is also excluded. Also, if the debtor under the minimal asset process reasonably requires the use of a vehicle, any vehicle owned by the debtor the value of which does not exceed £3000, is not to be regarded as an asset.

The vesting of a debtor's estate in a trustee shall not affect the right of hypothec of a landlord.

It should be remembered that the provisions on vesting are without prejudice to the right of any secured creditor, which is preferable to the rights of the trustee.

In a trust deed the assets of the debtor are transferred to be administered for the benefit of creditors and payment of debts, although only assets which are capable of voluntary transfer can be transferred by the debtor. If a trust deed becomes protected, the 2016 Act contains provisions in relation to reaching an agreement in respect of a debtor's heritable property.

In corporate insolvency, all property owned by the company, anywhere in the world, is subject to the insolvency procedure. The term 'property' is widely defined in law.

4 What powers do the debtor and the insolvency practitioner have, respectively?

The trustee in a personal insolvency or trust deed (or any office holder) must be a qualified insolvency practitioner. The meaning of an insolvency practitioner, in terms of the 1986 Act, is the same in Scotland as it is in England and Wales. It is an offence for a person, other than the Accountant in Bankruptcy, to act as a trustee in Scotland without being a qualified insolvency practitioner.

An insolvency practitioner must be a natural person. Licences for insolvency practitioners can only be issued by a professional body that the Secretary of State authorises to do so. To obtain a license the applicant must pass exams and have a certain number of hours of practical insolvency experience.

In every personal insolvency there is a trustee, whose general functions are:

to recover, manage and realise the debtor's estate, whether situated in Scotland or elsewhere;

to distribute the estate among the debtor's creditors according to their respective entitlements;

to ascertain the reasons for the debtor's insolvency and the circumstances surrounding it;

to ascertain the state of the debtor's liabilities and assets;

to maintain a sederunt book during their term of office for the purpose of providing an accurate record of the sequestration process;

to keep regular accounts of their intromissions with the debtor's estate, such accounts being available for inspection at all reasonable times by the commissioners (if any), the creditors and the debtor, and;

whether or not the trustee is still acting in the insolvency, to supply the Accountant in Bankruptcy with such information as he considers necessary to enable him to discharge his functions under the 2016 Act.

A trustee, in performing their functions, shall also have regard to advice offered to him by the commissioners (if any).

If the trustee has reasonable grounds to suspect that an offence has been committed in relation to an insolvency by the debtor in respect of their assets, their dealings with them, or their conduct in relation to their business or financial affairs, or by a person other than the debtor in that person's dealings with the debtor, the interim trustee or the trustee in respect of the debtor's assets, business or financial affairs, then the trustee shall report the matter to the Accountant in Bankruptcy. Also, if the trustee has reasonable grounds to believe that any behaviour on the part of the debtor is of a kind that would result in a sheriff granting an application for a bankruptcy restrictions order, the trustee shall report the matter to the Accountant in Bankruptcy. The reports shall be absolutely privileged.

Where the Accountant in Bankruptcy is the trustee, he may apply to the sheriff for directions in relation to any particular matter arising in the insolvency.

Where the debtor, a creditor or any other person having an interest is dissatisfied with any act, omission or decision of the trustee, they may apply to the sheriff court and, on such an application being made, the sheriff may confirm, annul or modify any act or decision of the trustee or may give the trustee directions or make such order as they see fit.

The remuneration of an insolvency practitioner acting as an office-holder in a corporate insolvency is set by creditors. The insolvency practitioner can apply to court if they think the remuneration basis set by creditors is insufficient. Creditors may apply to court if they consider remuneration is excessive.

5 Under which conditions may set-offs be invoked?

A debt which arises before insolvency may be set-off against a claim against the creditor which arises before the insolvency. A debt which arises after insolvency may be set-off against a claim which arises after insolvency.

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

While the trustee in personal insolvency proceedings represents both the creditors and the debtor, the trustee does not represent the debtor in his liabilities. As such the trustee is not, by acceptance of office and taking possession of the estate, bound to the creditors of the debtor in any continuing obligations or

contracts which continue after insolvency has commenced. It is however possible for the trustee, with the authority of creditors, to adopt a contract. In doing so, the trustee will either bind the creditors directly (or those who gave authority), or the trustee will be personally bound with relief against the creditors. A trustee who adopts a contract without the authority of creditors is personally liable for the obligations.
The trustee may enter into any contract where it is considered that this would be beneficial for the administration of the debtor's estate, except where the adoption is precluded by the express or implied terms of the contract.
In some contracts the trustee may not have to execute any performance and can simply claim the benefit of the contract; such as collect payment. In other contracts the trustee may honour the obligations and carry out performance because a benefit will be produced for the estate.
If the trustee does not adopt a contract then the other party may have a claim for damages as an ordinary creditor in the insolvency, but not, in the absence of special provision in the contract, if the other party has terminated the contract or consented to the same, following the insolvency.
The contractual powers of the trustee in a personal insolvency are set out at section 110 of the 2016 Act. The trustee must, within 28 days from receipt of a request in writing from any party to a contract entered into by the debtor, adopt or refuse to adopt the contract. The 28 day period may be extended on application to the sheriff court if the Accountant in Bankruptcy is trustee, or by application to the Accountant in Bankruptcy if he is not the trustee. Any such decisions to extend the period are subject to review or appeal. It is also possible for the Accountant in Bankruptcy to refer a case to the sheriff for a direction before making a decision or undertaking any review. If the trustee does not reply in writing to a request by any party to a contract within the 28 day period (or any longer period, as the case may be) then the trustee shall be deemed to have refused to adopt the contract.
The continued provision of certain supplies (utilities, communications and IT services considered ‘essential’) can be continued in the insolvency without the need to pay any arrears outstanding at the entry to insolvency.
In corporate insolvency an insolvency office-holder is under no obligation to perform contracts entered into by the debtor company. A liquidator may disclaim an unprofitable contract, ending the insolvent’s interest/liability in it (the counterparty may claim in the insolvency for losses/damages as a result of the insolvency). Other than essential supplies, suppliers can terminate contracts upon insolvency (if their contract provides for it). Any unpaid goods/services would be a claim in the insolvency.

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

In personal insolvencies, section 109(5) of the 2016 Act allows the trustee to bring, defend or continue any legal proceedings relating to the estate of the debtor.
Generally, if someone has a claim against a debtor at the date on insolvency, they will claim in the insolvency. Although court action against the debtor may be the most appropriate way to constituted a disputed debt.
The processes of liquidation and administration acts to create a moratorium. Legal action cannot be taken against the company post-commencement without the consent of the office-holder, or permission of the court.
In a CVA, any creditor bound by the agreement could not take legal action to purse the debt (as they are bound by the accepted agreement). A post-approval creditor could take such action if they were not paid.

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

A debtor cannot raise or continue a court action which the trustee is willing to pursue. Intimation of the action should be made to the trustee, allowing the opportunity to “sist” themselves into the action or defend it. The court action can however continue, regardless of the trustee’s position.
Proceedings affecting status; such as divorce, can be pursued by a debtor notwithstanding their entry into insolvency proceedings. An action of damages for solatium is personal to the party so a trustee has no title to initiate proceedings, although a trustee may sue for patrimonial loss or may enter into an action in which solatium is claimed, or a debtor may have to account to the trustee for the proceeds of any action.
There is provision in Scotland which allows a debtor to intimate their intention to apply for insolvency or a trust deed, by applying for a moratorium. A feature of the moratorium is that it provides the debtor with a 6 week protection from diligence. So a court action may continue during this period before the insolvency proceedings are entered into, however diligence on any judgement granted will not be allowed.
The liquidation and administration processes create a moratorium. Pending actions at the date of the insolvency cannot be continued without the consent of the office-holder, or permission of the court.
A creditor in a pending action at the approval of a CVA could not continue such an action, as they would be bound by the terms of the CVA (whether or not they themselves voted to approve it).

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

Creditors can be involved in insolvency proceedings in a number of ways, including creditors meetings. Within 60 days of an award of insolvency the trustee has to decide whether or not to call a statutory meeting of creditors. If a meeting is held, the creditors present can vote to replace the trustee. If the trustee decides not to call a meeting, creditors can request one and the trustee is obliged to call the meeting if not less than a quarter in value of the creditors (based on the total debt owed) request it. Other meetings can be called by creditors at any time. A meeting must be held if called by one tenth in number or one third in value (based on the debt owed) of the creditors. A meeting of creditors can issue directions to a trustee but the trustee and other creditors have the right to appeal to the sheriff court. At any meeting of creditors commissioners can be elected. Commissioners can be elected to generally advise and supervise the administration of the bankruptcy, including auditing the trustee's accounts. Commissioners are creditors or their mandated representatives. If no commissioners are elected, the Accountant in Bankruptcy performs this function.
Trustees are required to produce accounts at the end of the first year and periodically thereafter until the end of the insolvency. Accounts have to be audited by the Accountant in Bankruptcy or elected commissioners. Creditors will be sent copies of a determination of the trustee’s outgoings and remuneration. Creditors can ask to see the accounts and can appeal against the determination.
In relation to an ordinary trust deed, the deed will not be binding on creditors unless they have agreed to its terms, and it becomes protected.
In corporate insolvency proceedings, creditors participate in insolvency proceedings though creditor meetings and other decision processes. They may also form a committee and elect its members. Office-holders must update creditors regularly (every 6 or 12 months, depending on the procedure) on the progress of a case.

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

The trustee in a personal insolvency administers the insolvency on behalf of the creditors, and has powers to identify and recover the debtor’s estate which vests in the trustee. Indeed section 109 of the 2016 Act states that the trustee shall, as soon as may be after their appointment, and for the purpose of recovering the debtor’s estate (subject to section 113 of the Act regarding the debtor’s family home), take possession of the debtor’s whole estate so far as vesting in the trustee and any document in the debtor’s possession or control relating to his assets or his business or financial affairs. The trustee must also make up and maintain an inventory and valuation of the estate, and thereafter send a copy of any such inventory and valuation to the Accountant in Bankruptcy. The trustee is also entitled to have access to all documents relating to the assets or the business or financial affairs of the debtor sent by or on behalf of the debtor to a third party and in that third party's hands, and to make copies of any such documents. If any person obstructs a trustee who is exercising, or attempting to exercise, a power to access documents, the sheriff, on the application of the trustee, may order that person to cease so to

obstruct the trustee. The trustee may further require delivery of any title deed or other document of the debtor, notwithstanding that a right of lien is claimed over the title deed or document, but without prejudice to any preference of the holder of the lien.
Once assets have been recovered, the trustee must then manage and realise the estate. In terms of section 109 of the 2016 Act the trustee shall, as soon as may be after their appointment, consult with the Accountant in Bankruptcy concerning the exercise of their functions and, subject to certain exceptions, comply with any general or specific directions given to him as the case may be by the creditors; on the application of the commissioners; by the sheriff, or; by the Accountant in Bankruptcy, as to the exercise by the trustee of such functions.
The trustee may do any of the following:
carry on or close down any business of the debtor;
bring, defend or continue any legal proceedings relating to the estate of the debtor;
create a security over any part of the estate;
where any right, option or other power forms part of the debtor's estate, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power;
borrow money in so far as it is necessary for the trustee to do so to safeguard the debtor's estate; and
effect or maintain insurance policies in respect of the business or property of the debtor.
Any sale of the debtor's estate by the trustee may be by either public sale or private bargain.
The following rules shall apply to the sale of any part of the debtor's heritable estate over which a heritable security is held by a creditor or creditors if the rights of the secured creditor or creditors are preferable to those of the trustee:
the trustee may sell that part only with the concurrence of every such creditor unless they obtain a sufficiently high price to discharge every such security;
the taking of steps by a creditor to enforce their security over that part after the trustee has intimated to the creditor that they intend to sell it, and the commencement by the trustee of the procedure for the sale of that part after a creditor has intimated to the trustee that they intend to commence the procedure for its sale, shall be precluded;
where the trustee or a creditor has given intimation (as outlined above), but has unduly delayed in proceeding with the sale, then, if authorised by the sheriff in the case of intimation under any creditor to whom intimation has been given, may enforce their security, or vice versa the trustee may sell that part.
The function of the trustee to realise the debtor's estate shall include the function of selling, with or without recourse against the estate, debts owing to the estate.
The trustee may sell any perishable goods without complying with any directions given, if the trustee considers that compliance with such directions would adversely affect the sale.
It is incompetent for the trustee, or an associate of the trustee, or for any commissioner, to purchase any of the debtor's estate in pursuance of section 109 of the 2016 Act.
The trustee must comply withthe requirements of section 109(7) of the 2016 Act and may do anything permitted by section 109 only in so far as, in their view, it would be of financial benefit to the estate of the debtor and in the interests of the creditors to do so.

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?

Creditor claims in an insolvency proceeding in Scotland are debts which, generally, were due as at the date of insolvency. If an application was presented by a debtor, then the date of insolvency is the date of award. If the insolvency arose by virtue of a creditor petition, then the date of insolvency is the date of the first warrant to cite the debtor.
The trustee's outlays and remuneration, the expenses incurred by a creditor who petitioned for the debtor's insolvency or concurred in the petition, and interest on the debts from the date of insolvency until payment of the debt, are also paid from the estate (provided that sufficient funds are ingathered).
Claims which arise after the opening of the insolvency proceedings cannot be claimed. Therefore a creditor whose claim arises after the sequestration has a claim against the debtor, which could result in a further insolvency proceedings being opened. Indeed, it is competent to have more than one insolvency in progress against a single debtor.
In corporate insolvency, all debts and liabilities owed by the company prior to the onset of insolvency can be lodged in the insolvency. Debts payable in the future may also be claimed, but discounted to present values. Liabilities arising from certain criminal actions (such as drug trafficking) are not provable in administration or liquidation. Liabilities incurred after the commencement of proceedings are considered 'expenses'. These are subject to their own hierarchy of payment but all must be paid before money can be distributed to creditors.

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

Section 122 of the 2016 Act sets out the provisions for submitting claims in a personal insolvency. In order to obtain an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate, a creditor must submit a claim to the trustee not later than the "relevant day". The relevant day is the day which is 120 days after the day on which notice is given to the creditor as to whether the trustee intends to call a statutory meeting, or where no notice is given to the creditor, the day which is 120 days after the day on which the trustee gives notice to the creditor inviting the submission of claims.
If a creditor submits a late claim to the trustee (after the relevant day) then the trustee may, in respect of any accounting period, provide an adjudication as to the creditor's entitlement (so far as funds are available) to a dividend out of the debtor's estate if the claim is submitted not later than 8 weeks before the end of the accounting period, and there were exceptional circumstances which prevented the claim from being submitted before the relevant day.
The trustee, for the purpose of satisfying the validity or amount of a claim submitted by a creditor, may require the creditor to produce further evidence. The trustee may alternatively require any other person who they believe can produce relevant evidence, to produce such evidence. If the creditor or other person refuses or delays to do so, the trustee may apply to the sheriff court for an order requiring the creditor or other person to attend for private examination before the sheriff.
Creditor's claims are to be submitted in a prescribed form, as set out in the Bankruptcy (Scotland) Regulations 2016.
Creditors in a corporate insolvency may submit a claim (proof of debt) at any point in proceedings. A claim must be submitted to be able to vote in any meeting (or other decision procedure) or to receive a distribution. In administration or liquidation, where a distribution is intended, the office-holder will write to all those creditors yet to prove their claims stating that a distribution will be made, inviting them to submit claims, and fixing a last date to do so in order to be included in that distribution. An office-holder may deal with claims submitted after this date, but is not obliged to do so. In winding up by the court there is a standard form that must be submitted to prove debts. No other procedure has a standard form but the legal framework for other procedures states what must be included in a proof for distribution purposes. If a creditor does not claim in time, they cannot disturb the distribution.

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

The priority of distribution in personal insolvency proceedings are as follows:
The outlays and remuneration of the interim trustee in the administration of the debtor's estate;
The outlays and remuneration of the trustee in the administration of the debtor's estate;

Where the debtor is a deceased debtor, deathbed and funeral expenses reasonably incurred and expenses reasonably incurred in administering the deceased's estate;
The expenses reasonably incurred by a creditor who is a petitioner, or who concurred in a debtor application, for the debtor's insolvency;
Ordinary preferred debts (excluding any interest which has accrued thereon to the date of insolvency);
Secondary preferred debts (excluding any interest which has accrued thereon to the date of insolvency);
Ordinary debts;
Statutory interest on the ordinary preferred debts the secondary preferred debts and the ordinary debts between the date of insolvency and the date of payment of the debt, and;
Any postponed debt.
Any surplus remaining, after all the debts have been paid in full, shall revert to the debtor or to his successors or assignees.
Some claims arising from employment are treated as preferential, and payable after the expenses of the procedure are met but before the claims of floating chargeholders and unsecured creditors.

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

Insolvency proceedings are generally thought of as being closed once the administration is complete and the trustee has paid any dividends to creditors, has completed all accounts, and has been discharged as trustee. However, it has been established through case law in Scotland that insolvency continues notwithstanding the discharge of the debtor and the trustee. This is because the process may be revived through an application to the court, or now in certain circumstances; the Accountant in Bankruptcy.
The effect of closure of the insolvency proceedings are that, in terms of section 145 of the 2016 Act, the debtor is discharged within the United Kingdom of all debts and obligations for which they were liable at the date of insolvency. Accordingly, the creditors can no longer look to enforce payment of these debts. There are exceptions however, with the debtor not discharged of any liability to pay a fine imposed in a justice of the peace court (or a district court, any liability under a compensation order within the meaning of section 249 of the Criminal Procedure (Scotland) Act 1995 ("**the 1995 Act**"), any liability to forfeiture of a sum of money deposited in court under section 24(6) of the 1995 Act; any liability incurred by reason of fraud or breach of trust, any obligation to pay aliment or any sum of an alimentary nature under any enactment or rule of law or any periodical allowance payable on divorce by virtue of a court order or under an obligation, not being aliment or a periodical allowance which could be included in the amount of a creditor's claim, or child support maintenance within the meaning of the Child Support Act 1991 ("**the 1991 Act**") which was unpaid in respect of any period before the date of sequestration of any person by whom it was due to be paid or any employer by whom it was, or was due to be, deducted under section 31(5) of the 1991 Act.
At the end of a trust deed the debtor is discharged from all their trust deed debts providing that their trustee considers that they have met their obligations under the trust deed.
Provision for composition was repealed in Scotland in respect of insolvency petitions presented after 1 April 2015, by virtue section 18 of the Bankruptcy and Debt Advice (Scotland) Act 2014.
There are detailed procedural rules on the exit/closure of all corporate insolvency proceedings, both liquidation and reorganisation.
Court approval is not needed for reorganisation plans, but an aggrieved party may apply to the court if they feel their interests have been unnecessarily harmed.
Creditors agree proposals made by the debtor (in a CVA – >75% approval, by value) or insolvency office-holder (administration, simple majority, or approval of all secured and a majority preferential creditors in cases where no return to unsecured creditors is thought likely).
In a CVA, once approved all unsecured creditors at the point of the proposals are bound by the arrangement.

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

After closure of insolvency proceedings, creditors may appeal the discharge of the trustee, and also have the right to make an application to reopen and revive the proceedings.
Also, as discussed above, while the closure of the insolvency proceedings and debtor discharge generally means that the debtor is discharged in the United Kingdom of all debts and obligations for which they were liable for at the date of insolvency, there are exclusions. Therefore, creditors may still have rights to pursue these certain excluded debts, notwithstanding the closure of the insolvency proceedings.
Creditors may also claim funds distributed to them (but not banked by them) after the closure of the proceedings.

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

The costs and expenses incurred in insolvency proceedings should be met through funds ingathered from the estate. However if there are insufficient funds to cover the costs and expenses of the proceedings, and the Accountant in Bankruptcy is the trustee, then these costs will be met by the public purse. If the trustee is an insolvency practitioner and not the Accountant in Bankruptcy, then the trustee may look to the petitioning creditor to cover any shortfall in circumstances where insufficient funds have been ingathered to pay the costs and expenses of the proceedings. Costs and expenses must be paid (from realisations) before funds are returned to creditors.

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

Gratuitous alienations, unfair preferences and other fraudulent transactions are subject to challenge at common law, and in accordance with sections 98(11) and 99(8) of the 2016 Act.
A gratuitous alienation by a debtor is challengeable by any creditor who is a creditor by virtue of a debt incurred on or before the date of insolvency, or before the granting of the trust deed or the debtor's death. It is also challengeable by the trustee, the trustee acting under the trust deed, or the judicial factor, as the case may be.
A challenge to a gratuitous alienation applies where, by the alienation, any of the debtor's property has been transferred or any claim or right of the debtor has been discharged or renounced, and any of the following has occurred:
the debtor's estate has been made insolvent (other than, in the case of a natural person, after their death); or
the debtor has granted a trust deed which has become a protected trust deed; or
the debtor has died and within 12 months after death, their estate has been made insolvent; or
the debtor has died and within the said 12 months, a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to administer their estate and the estate was absolutely insolvent at the date of death; and
the alienation took place on a relevant day.
The day on which an alienation took place shall be the day on which the alienation became completely effectual, and "relevant day" means if the alienation has the effect of favouring:
a person who is an associate of the debtor, a day not earlier than 5 years before the date of insolvency, the granting of the trust deed or the debtor's death, as the case may be; or
any other person, a day not earlier than 2 years before the said date.

On a challenge being brought the court shall grant decree of reduction or for such restoration of property to the debtor's estate or other redress as may be appropriate, but the court shall not grant such a decree if the person seeking to uphold the alienation establishes:
that immediately, or at any other time, after the alienation, the debtor's assets were greater than his liabilities; or
that the alienation was made for adequate consideration; or
that the alienation -
was a birthday, Christmas or other conventional gift; or
was a gift made, for a charitable purpose, to a person who is not an associate of the debtor,
which having regard to all the circumstances, it was reasonable for the debtor to make, without prejudice to any right acquired in good faith and for value from or through the transferee in the alienation.
An unfair preference by a debtor is subject to statutory challenge. The challenge may be by a creditor who is a creditor by virtue of a debt incurred on or before the date of insolvency, the granting of the protected trust deed, or the debtor's death. There may also be a challenge by the trustee, the trustee acting under a protected trust deed, or a judicial factor. The transaction must have had the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than: 6 months before the insolvency, the granting by the debtor of a trust deed which has become a protected trust deed, or the debtor's death where within 12 months after death the estate has been made insolvent or a judicial factor has been appointed. However a transaction shall not be challengeable where it was in the ordinary course of trade or business, a payment in cash for a debt which when it was paid had become payable (unless the transaction was collusive with the purpose of prejudicing the general body of creditors), a transaction whereby the parties undertook reciprocal obligations (whether the performance by the parties of their respective obligations occurs at the same time or at different times) unless the transaction was collusive, or the granting of a mandate by a debtor authorising an arrestee to pay over the arrested funds or part thereof to the arrester where there has been a decree for payment or a warrant for summary diligence and the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution. On a challenge being brought, the court, if satisfied, shall grant decree of reduction or for such restoration of property to the debtor's estate or other redress as may be appropriate, provided that this shall be without prejudice to any right acquired in good faith and for value from or through the creditor in whose favour the preference was created.
In corporate insolvency, if the company has preferred a particular creditor in the approach to formal insolvency, or they had entered a transaction at an undervalue, then an office-holder may pursue the recipient. On application of the office-holder in a liquidation or administration, a court may reverse either type of transaction and order that the recipient restore the position to what it would have been if the transaction had not taken place.
Claims to reverse preference payments must relate to transactions which occurred in the 6 months prior to appointment of the administrator or commencement of the winding-up, or 2 years in the case of a preference payment made to an associate.
Claims to reverse transactions at undervalue must relate to transactions made in the 2 years prior to those events.
An office-holder in administration, liquidation or a voluntary arrangement may apply to the court for an order reversing a transaction which defrauded creditors. Such an application may also be made by a victim of the transaction, with the leave of the court.
In administration and liquidation proceedings the office-holder may also take reparation action against any director of the company involved in trading with knowledge of insolvency which caused further losses to creditors, fraudulent trading, or misfeasance.
In a case where a petition for winding-up is presented to the court, any dispositions of property made after presentation of the petition are void unless the court orders otherwise.

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