Restructuring & Insolvency

Contributing editor
Bruce Leonard

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GETTING THE DEAL THROUGH

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Bulgaria

Ina Bankovska and Tsvetelina Stoilova
Kinkin & Partners

Legislation

1 What legislation is applicable to insolvencies and reorganisations? What criteria are applied in your country to determine if a debtor is insolvent?

The legislation applicable to insolvencies and reorganisations spans several acts governing the general and special procedures with regard to the type of company or enterprise concerned, for example, the Commerce Act, the Bank Insolvency Act and the Credit Institutions Act, the Insurance Code, the Social Security Code, and Council Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings. Subordinate legislation contains provisions affecting certain areas of the insolvency and reorganisation procedures in order to guarantee the receivables of employees, investors, insured persons or bank clients.

Merchants are declared insolvent due to illiquidity, which occurs when they cannot fulfil an outstanding obligation arising from a commercial transaction, public obligation arising from their commercial activity or a private obligation to the state. Corporate legal persons can also be declared insolvent if they are over-indebted – meaning that the obligations they have undertaken, although not being due, are overwhelming and cannot be covered by the short- and long-term assets of the company.

Special legislation concerning banks, insurance companies and supplementary social insurance companies states that such legal persons may enter into insolvency procedures if they lose their licence.

Courts

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

The competent first instance court in all insolvency procedures is the regional court where the seat of business of the merchant was located at the moment when the petition for initiation of the insolvency proceedings was submitted. The competent Court of Appeal and the Supreme Cassation Court act as a second and third instance respectively. The civil courts have exclusive jurisdiction over all matters in the insolvency procedure.

Excluded entities and excluded assets

3 What entities are excluded from customary insolvency proceedings and what legislation applies to them? What assets are excluded from insolvency proceedings or are exempt from claims of creditors?

The Bulgarian state, municipalities and state enterprises exercising constitutional monopoly over certain commercial sectors, or those incorporated through a special law, cannot be declared insolvent. Banks, insurance companies and supplementary social insurance companies are subject to special rules regarding their insolvency procedures which include mandatory supervision by the Bulgarian National Bank (BNB) and the Commission for Financial Supervision (CFS).

Corporations that can be declared insolvent have all their property included in the insolvency estate. Natural persons, such as sole merchants and liable partners in partnerships, have certain properties that are excluded from the insolvency proceedings, such as their only abode, private belongings for common use, machines, books and gear used for the debtor's profession and agricultural land of up to 30 hectares. These exceptions are only valid if the debtor has not attempted to dispose of said properties in some way.

Public enterprises

4 What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

The government-owned enterprises that exercise state monopoly over a certain commercial sector or that are incorporated through an individual law are explicitly excluded from the scope of the common rules of the insolvency proceedings under the Commerce Act. The law prescribes that all relations concerning the insolvency of such public enterprises shall be regulated in a law, specially created for this purpose. At the same time if a public enterprise does not exercise state monopoly or is not incorporated through an individual law, then it is a subject of the common insolvency procedure, applicable for all enterprises.

If a monopolistic public enterprise becomes factually insolvent, the responsible state or municipal authority shall undertake informal steps to settle its obligations towards the creditors. In case of an enterprise, created through an individual legal act, the specific rules of such law shall apply. The specific regulations which are created for the specific public enterprise shall apply to its creditors. For all other types of public enterprises the common regulations of the insolvency procedure shall apply.

Protection for large financial institutions

5 Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

The law treats the government-owned enterprises, banks, insurance companies and supplementary social insurance companies differently – as 'too big to fail' – and has provided differently than the ordinary commercial enterprises' insolvency treatment. No insolvency proceedings can be initiated against government-owned enterprises (see question 4).

Insolvency proceedings against banks can only be initiated by BNB, while insolvency proceedings against insurance companies and supplementary social insurance companies can only be initiated by CFS, and only after their licence has been revoked.

Secured lending and credit (immoveables)

6 What principal types of security are taken on immoveable (real) property?

There are two ways to take a security over an immoveable property under Bulgarian law: through mortgage over a separate property and through a special pledge over a commercial enterprise under the Special Pledge Act (SPA), wherein the entire enterprise of the debtor is pledged, including all immoveable and moveable assets.

Secured lending and credit (moveables)

7 What principal types of security are taken on moveable (personal) property?

Bulgarian law recognises common and special pledge. Under the common pledge the debtor transfers the possession over a property to the

creditor while retaining the ownership. Under the special pledge the property remains in possession of the debtor. It is typically used for personal properties necessary for the everyday business activity of the debtor.

In civil law, a creditor has the right of lien on a debtor's personal property in his or her possession only for the obligations arising from its preservation, maintenance, repair and improvement, or for damages caused by it. In commercial law, a creditor is entitled to a lien on any moveables and financial securities of the debtor, for any claims against the debtor, arising from a transaction concluded between them. Title retention over sold chattels until the price is paid in full is allowed under Bulgarian law, but in such an event the risk of damage or destruction of the property does not pass to the buyer until the ownership is transferred in full.

Unsecured credit

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

Unsecured creditors may request a pre-judgment attachment over the debtor's assets by securing a present or future legal action. The procedure for securing a future claim is simple, quick and aims to surprise the debtor. The creditor must prove before the court that his or her claim has reasonable grounds and that the security measure is necessary for its satisfaction. If the court approves the petition for securing the claim, the creditor has up to one month to bring an action before it. If he or she does so, the measures remain in force for the rest of the trial. The attachment or the injunction make the creditor a joint claimant to any present or future execution over the secured property, meaning that a portion of any sums collected shall be kept for him or her until the court proceedings regarding his or her action are complete.

No special rules apply to foreign creditors.

Voluntary liquidations

9 What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Voluntary liquidations may be commenced if the merchant has been established for a certain term – by the end of it, or by a decision of the competent management body. When the procedure is initiated, the legal entity ceases all its business activity. A liquidator who represents the enterprise is appointed by the competent body of the merchant. He or she observes and manages the termination of the company by fulfilling the remaining obligations, claiming all receivables, drawing an inventory of all assets, determining and distributing the liquidation shares between the shareholders.

A voluntary liquidation may be carried out only if the enterprise of the merchant has enough assets to cover all its outstanding obligations. If the liquidator discovers that the company is in a state of illiquidity or over-indebtedness, he or she is obliged by law to initiate an insolvency procedure.

Involuntary liquidations

10 What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects?

Involuntary liquidations are not regulated separately under Bulgarian law. They find their place somewhere between the voluntary liquidation, whereas they bear resemblance in the fact that the merchant's enterprise must still have enough assets to cover all outstanding obligations, and insolvency procedures since they are usually initiated by the court or government authority against the merchant's will.

Common corporate legal persons or partnerships may enter involuntary liquidation procedure if they are terminated by the court due to irregularities in their registration or non-compliance with mandatory provisions of the law for their existence, if an action is brought by a prosecutor or an interested party. The procedure and its prerequisites are the same as those in voluntary liquidations. The legal entity ceases all business activity and initiates cash down procedure.

Voluntary reorganisations

11 What are the requirements for a debtor commencing a formal financial reorganisation and what are the effects?

The debtor, the insolvency administrator, part of the creditors, part of the shareholders, the partners with unlimited liability and 20 per cent of the employees of the debtor can all offer a reorganisation plan in the general insolvency proceedings within a month of the court's decision approving the lists of accepted claims.

The law allows the debtor to settle his or her obligations out of court via contract with all creditors, which, after being concluded, must be presented before the court.

The major effect of such reorganisation is that the insolvency proceedings are stayed and a procedure for the merchant's recovery is initiated.

Involuntary reorganisations

12 What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

Only creditors with more than one-third of secured or unsecured claims are entitled to offer a reorganisation plan in the insolvency proceedings. The approval of the debtor is not required and the law obliges him or her to comply with it even if he or she has not agreed to the reorganisation.

Mandatory commencement of insolvency proceedings

13 Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result? What are the consequences if a company carries on business while insolvent?

A debtor who has become insolvent due to illiquidity or over-indebtedness is obliged to file a petition for the commencement of an insolvency procedure before the regional court within 30 days from the date of factual insolvency. The petition is filed by the debtor, his or her heir, a management body, a representative or a liquidator of the company, or by a liable partner. The non-fulfilment of this obligation leads to joint and several liabilities of the above-mentioned individuals along with the insolvent merchant before the company's creditors for any damages caused.

Furthermore, the infringement of these obligations may lead to criminal liability of the person entitled with the obligation to file the petition, as the Bulgarian Criminal Code envisions an imprisonment of up to three years or a fine of up to 5,000 Bulgarian levs. In the event that a merchant carries on its business while insolvent without filing a petition, some of its transactions may be invalidated.

Doing business in reorganisations

14 Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use or sale of the assets of the business? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities? What powers can directors and officers exercise after insolvency proceedings are commenced by, or against, their corporation?

During initiated insolvency proceedings, the debtor may carry on its business under the supervision of the insolvency administrator. The debtor may perform new transactions only with the prior approval of the insolvency administrator. If the debtor endangers the interests of the creditors, the court may deprive him or her of the right to manage and dispose of his or her assets.

If creditors have receivables that have occurred after the date of the court's decision on the insolvency proceedings, they receive their payments on the due date or are satisfied preferentially before unsecured claims pursuant to the specific order of claims under the acting legislation before unsecured ones.

The creditors with approved claims form the meeting of creditors and the optional creditors' committee (see question 28) that oversee the debtor's ongoing business activity and elect an insolvency administrator who approves any transactions or contracts made by the debtor.

The court initiates and terminates the insolvency proceedings, supervises the debtor's activity and has the powers to declare transactions invalid in respect to the insolvency creditors on specific grounds provided by the legislation.

If a recovery plan has been approved by the meeting of creditors and affirmed by the court, all business transactions of the insolvent enterprise are carried out under the supervision of a supervisory body, determined and appointed by the creditors and approved by the court.

Stays of proceedings and moratoria

15 What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

All judicial and arbitration proceedings on civil and commercial cases brought against the debtor are stayed upon the start of the insolvency proceedings except the labour court proceedings for monetary receivables of employees of the debtor. On the other hand, in the case of initiated liquidation procedure all the legal proceedings continue normally.

The prohibition itself shall not be applied if, up until the date of when the insolvency proceedings have been initiated, there is another case in which the debtor is a defendant and the court has admitted for joint hearing a counter claim or a set-off objection made by the debtor. Certain creditors may also obtain a relief from this prohibition in the event of claims for monetary receivables secured by a property owned by third parties.

The enforcement proceedings for any properties included in the insolvency estate, with the exception of the secured public receivables, are stayed as well.

Bringing a new court or arbitration proceedings for civil or commercial cases against the debtor is not allowed with the exception of claims for the protection of third-party rights on properties included in the insolvency estate, labour disputes and monetary receivables secured by property owned by third parties.

Post-filing credit

16 May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

Bulgarian law does not explicitly prohibit the obtaining of secured or unsecured loans or credits by a debtor during the insolvency proceedings. However, such a transaction is performed under the supervision of the insolvency administrator who must approve the deal, especially if the loan, respectively the credit, will be secured with a property from the insolvency estate.

Despite the fact that the receivables on the loan or the credit have emerged after the date of the decision for initiation of the insolvency, the creditors have the right to receive payment on the due date. If such a payment is not received, they are satisfied preferentially from the insolvency estate before the unsecured creditors but after secured ones.

In the liquidation proceedings the merchant could obtain a loan or credit only if this is needed for performing the liquidation, but such case is rare.

Set-off and netting

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

The legislation allows a creditor to effect a set-off with his or her debt towards the debtor in the initiated insolvency proceedings if prior to the insolvency both of the debts have existed and are mutual, of the same kind and the creditor's claim is due.

The CA prescribes that all monetary and non-monetary obligations of the debtor become due as from the date of the court's decision for declaring the insolvency. If the creditor's claim has become due in the course of the insolvency proceedings or as a result of the court's decision, as well as if both of the debts have become of the same kind, the creditor may effect a set-off after the claim has become due or, respectively, uniform. In both cases the statement for the set-off shall be made before the insolvency administrator.

The set-off may be declared void in respect to the insolvency creditors if the creditor has acquired the claim and the debt towards the debtor before the decision for the initiation of the insolvency, if he or she has known that the debtor is insolvent, respectively over-indebted, or that a petition for the initiation of the insolvency proceedings was filed before the court.

Sale of assets

18 In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

In the insolvency proceedings, which include both reorganisation and liquidation, Bulgarian legislation allows several cases of sale of assets of an insolvent debtor: special cases of sale of specific assets by the insolvency administrator by means of direct negotiation; sale of the enterprise of the insolvent merchant or a part of it; and sales of the assets of the debtor through an auction. These sales are implemented by the insolvency administrator with the prior permission of the court. The purchaser acquires the assets 'free and clear' of claims, as the creditors having securities on them are being satisfied in a specific order.

Bulgarian law does not regulate a sale under the 'stalking horse' bids manner as the sales in the insolvency procedure may be implemented only through an auction or direct negotiations. As far as how the sales and their conditions are implemented by the insolvency administrator after the approval of the creditors' assembly and the court, there are no 'stalking horse' bids in the sale procedure. All of the proposed bids are listed by the insolvency administrator who sells the relevant asset to the purchaser who has offered the highest price.

Bulgarian practice is unfamiliar with the legal figure of credit bidding. The purchase of assets by a creditor has not been explicitly forbidden by the law, but it should be taken into consideration that all of the amounts raised by the performed sale of assets are collected by the insolvency administrator and distributed to all of the debtor's creditors.

The court does not consider any specific factors during the assessment of any bid. It only approves the sale executed at auction and managed by the insolvency administrator. The law does not prevent the assignee of the original secured creditor to participate in the auction. The only restrictions are for the debtor, its representative, the insolvency administrator, the persons who manage or guard the property, judges, prosecutors, state and private bailiffs, entry judges and lawyers – who shall not have the right to participate in the bidding.

Intellectual property assets in insolvencies

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

There are no specific rules regulating the legal status of a licensing agreement if an insolvency procedure has been opened against the debtor. The termination of the relationships between the licensor and the licensee is a manner of specific arrangement in the concluded agreement. Opening a procedure of insolvency upon the licensee may be set as a condition for the termination of the agreement.

On the other hand, the intellectual property itself is a part of the insolvency estate in the event of insolvency instituted against the licensor and can be sold or transferred under the supervision of the insolvency administrator and the court. The insolvency administrator may continue using the IP rights only if he or she has reached an agreement with the licensor.

Personal data in insolvencies

20 Where personal information or customer data collected by an insolvent company is valuable to its reorganisation, are there any restrictions in your country on the use of that information in the insolvency or its transfer to a purchaser?

Bulgarian legislation provides restrictions on the use of personal data related to the insolvency proceeding. Pursuant to the legal requirements 'personal data' shall refer to any information related to an individual who is identified or identifiable, directly or indirectly, by reference to an identification number or to one or more specific features. The actual legislation prescribes the personal data to be processed in legal compliance and in a bona fide manner; collected for specific, precisely defined and legal purposes and not be submitted to additional processing in a manner incompatible with such purposes; proportionate to the purposes for which they are being processed and not exceeding their scope.

Personal data may be processed only in cases when at least one of the following conditions is met: the processing is necessary for the execution of an obligation of the personal data controller, stipulated by law; the individual to whom such data refer has given his or her explicit consent; processing is necessary for the execution of obligations of a contract to which the individual to whom such data refer is a party, and for actions at the individual's request and preceding the execution of a contract; the processing is necessary in order to protect the life and health of the individual to whom such data refer; the processing is necessary for the performance of a task carried out in the public interest; the processing is necessary for the execution of competences vested by law in the data controller or in a third party to whom the data are disclosed; the processing is necessary for the execution of the legitimate interests of the personal data controller or a third party to whom the data are disclosed, except where such interests have priority over the interests of the individual to whom such data refer.

Rejection and disclaimer of contracts in reorganisations

21 Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

The insolvency administrator is entitled by means of written notification to terminate any contract to which the debtor is a party, in case it has not been performed wholly or partially. In this case the other party is entitled to receive a compensation for any damages incurred.

If an insolvent debtor breaches a contract after the insolvency case is opened, the relevant damages occurred for his or her creditor may be filed as unsecured insolvency claims, except for the agreements secured before the start of the insolvency proceedings.

Arbitration processes in insolvency cases

22 How frequently is arbitration used in insolvency proceedings? Are there certain types of insolvency disputes that may not be arbitrated? Will the court allow arbitration proceedings to continue after an insolvency case is opened? Can disputes that arise in an insolvency case after the case is opened be arbitrated with the consent of the parties? Can the court direct the parties to such disputes to submit them to arbitration?

The Bulgarian court has the sole and exclusive jurisdiction to review insolvency cases. The legislation does not allow arbitration concerning the insolvency proceedings.

Arbitration proceedings cannot be continued after the insolvency procedure is opened since the law prescribes that all judicial and arbitration proceedings on civil and commercial cases brought against the debtor with regards to his or her property must be stayed upon the initiation of the insolvency proceedings, with the exception of the labour court proceedings for monetary receivables, which are not subject to arbitration under Bulgarian law.

After opening the insolvency proceedings it is unacceptable for new civil or arbitral proceeding to be initiated except for those that are related to labour disputes or affect right of third parties who own property included in the insolvency estate or to monetary receivables, secured by third party's property.

Successful reorganisations

23 What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

The reorganisation plan may provide a rescheduling of payments, a release from liability in full or in part, a reorganisation of the enterprise, or the undertaking of other acts, transactions or measures. The mandatory contents are:

- extent of fulfilment of the claims, the manner of satisfaction of the creditors and the relevant time period for it, the guarantees for the objected or denied claims;
- terms and conditions under which the partners are released from liability;
- extent of satisfaction received by each class of creditors;
- guarantees provided to each class of creditors;
- managerial, organisational, legal, financial, technical, and other actions for the implementation of the plan; and
- influence of the plan on the employment of the debtor's employees.

The meeting of creditors is entitled to approve the plan. The voting is conducted in separate classes. The plan must be adopted by the creditors of each class by a simple majority. Afterwards the court approves the proposed reorganisation plan if it complies with the law.

The release of non-debtor parties from liability is a mandatory part of the plan as well and the CA does not prescribe specific conditions for the release. The release from liability comes into force after with the affirmation of the plan by the court.

Expedited reorganisations

24 Do procedures exist for expedited reorganisations?

Bulgarian legislation does not provide a specific expedited procedure for the reorganisation of an insolvent merchant. Nevertheless, the CA prescribes that a reorganisation plan may be proposed at different stages of the insolvency proceedings, but no later than one month from the registration of the court's ruling that approves the list of creditors with admitted claims in the Commercial Register.

A reorganisation plan may be proposed at the very beginning of the insolvency process, together with the submission of the petition for initiation of the insolvency by the debtor or by a creditor, which may expedite the reorganisation proceedings in respect of the time needed for the entire recovery procedure.

Unsuccessful reorganisations

25 How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

If a plan is rejected, a reorganisation process cannot be held. There are several ways for this to happen: the court may refuse to admit it for review by the meeting of creditors; the meeting of creditors may reject the plan by voting against it; or the court may refuse to approve the plan due to non-compliance with the regulations for its approval.

If the debtor fails to implement the adopted plan and its obligations, the creditors or the supervisory body may request the reopening of the insolvency procedure. In such cases illiquidity or over-indebtedness are not proved again and the transformative effect of the plan concerning the creditors' rights remains unchanged. Another legal consequence is that no reorganisation plan can be introduced again in the reopened insolvency procedure.

Insolvency processes

26 During an insolvency case, what notices are given to creditors? What meetings are held? How are meetings called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

All creditors receive notices for an appointed meeting through an invitation, given by the court and published in the Commercial Register. The creditors who are involved in litigation regarding their claims receive summons at their appointed address in the country. Creditors domiciled abroad without address in Bulgaria must appoint a legal address in the country.

The actions of the debtor, the creditors, the creditors' committee, the meeting of creditors, the insolvency administrator, as well as the acts of the court are registered into a special journal that is publicly available at the office of the insolvency court. The decisions of the appellate and cassation court on appeals against the acts of the regional court are made available to the persons concerned via written summon.

The insolvency administrator submits a report of his or her activity to the court and the creditors each month, or when asked. At the request of a creditor, the insolvency administrator shall present to the latter the logbook, the report and also an answer to any particular issues if they have not been answered in the report for the same period. The insolvency administrator is obliged to submit a final report at the conclusion of his or her work, which the creditors may raise objections to.

In general, the creditors may not pursue the estate's remedies against third parties because after the insolvency process is opened this is one of the insolvency administrator's powers. However, in regard to invalidation claims (see question 37), if the administrator fails to exercise his or her powers on the matter, the creditors may act instead.

The liabilities of all third parties, outside the debtor's group, cannot be released. The alleviations foreseen in the reorganisation do not apply to third parties, liable for the debtor's obligations. The law provides that the plan is mandatory for the debtor and the creditors. It is explicitly prescribed that guarantors, persons who have arranged a pledge or a mortgage for securing debtor's obligations, and persons liable jointly and severally with the debtor, cannot use the reliefs of the plan.

Enforcement of estate's rights

27 If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

If the available assets of the debtor are not sufficient to cover the insolvency proceedings expenses (including for pursuing a claim), the court shall determine an amount to be paid in a set period by the creditors. The other option is the court to allow the compulsory sale of insolvency assets. However, the creditors cannot pursue the claims themselves, unless the insolvency administrator refuses to act himself or herself (see question 25) except for the invalidation claims (see question 39).

Any fruits acquired from the remedies regardless of the person who has led the collection belong to the insolvency estate and are distributed under the order of claims prescribed by the CA.

Creditor representation

28 What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

The most significant committee is the meeting of creditors. Only creditors whose claims have been admitted by the court have voting rights at the meeting. The meeting has the power and obligation to elect and dismiss the insolvency administrator, to determine his or her remuneration, to hear his or her reports; to elect a creditors' committee and change its members, to hear the report of the creditors' committee, to determine the order and the way of conversion of the debtor's property, the method and the terms for evaluation of the property, etc.

The other representative body of the creditors is the creditors' committee. The election of this committee is optional. It assists and supervises the activities of the insolvency administrator, inspects the commercial accounts and cash availabilities and may also give an opinion regarding the continuation of the activity of the debtor's undertaking, the activities related to the conversion in cash and the liability of the insolvency administrator.

The creditors may elect a supervisory body together with the adoption of the recovery plan. It supervises the performance of the plan, hears reports on the merchants activity, gives prior approval to legal acts having effect on the debtor or on his or her long term business activity and proposes reopening of the insolvency procedure.

Insolvency of corporate groups

29 In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?

Bulgarian legislation does not provide special rules for insolvency proceedings involving corporate groups. In relation to companies forming a corporate group, the proceedings are initiated separately for each company of the group. The insolvency procedure shall proceed separately even though it was initiated for two or more companies, who are a part of the group. The competent court is entitled to resolve on each company of the group whether it meets the requirements of the law regarding declaring it insolvent. The assets may not be transferred from an administration in Bulgaria to administration in another country, the court remains the sole organ authorised to supervise and lead the insolvency proceedings.

Since the companies from a group are united on the basis of capital participation from one company to another, it is most likely (based on economic criteria) that when one or some of the companies of the group are facing liquidity the other companies will also be at risk of insolvency. The risk is higher for the subsidiaries when the parent company is bankrupt.

Appeals

30 What are the rights of appeal from court orders made in an insolvency proceeding? Does an appellant have an automatic right of appeal or must it obtain permission to appeal? Is there a requirement to post security to proceed with an appeal and, if so, how is the amount determined?

According to the actual Bulgarian legislation, the appellant does not have to obtain a permission to appeal the relevant court order in the insolvency proceeding as far the appellant is an interested party.

Bulgarian legislation provides special rules for the term within which a court order may be appealed.

For example, the court order with which it is decided an insolvency proceeding to be opened or rejected may be appealed within a seven-day term as from the date of its announcement in the Commercial Register.

The actual legislation does not provide requirements for posting a security in order to appeal a court decision by the relevant interested party.

Claims

31 How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions on the transfer of claims? Must transfers be disclosed and are there any restrictions on transferred claims? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?

The creditors are given three-month terms counted as from the publication of the decision for initiation of the insolvency proceedings in the Commercial Register to submit their claims in writing before the insolvency court. After that no claims that have emerged before the date of initiation of the insolvency proceedings may be submitted.

The insolvency administrator draws up a list of submitted claims, a list of the claims of employees and a list of denied claims. A creditor may object any claim admitted or rejected by the insolvency administrator. Otherwise the court approves the list of admitted and officially entered claims. If there are objections, the court examines them and

calls all creditors to a meeting of creditors where all objections are examined. If they are found to be justified the court may modify the list. The court adopts the final lists with a ruling that is not subject to appeal.

There are no provisions set out in legislation on the transfer of claims in the insolvency proceedings; respectively there are no restrictions or an obligation to disclose the transfer of claims.

A claim under a postponing condition is included in the initial distribution as a disputed claim. An adequate distribution amount is set aside for it. In the final distribution, this claim shall be excluded in case the condition has not occurred. A claim under a terminating (peremptory) condition shall be included in the distribution as unconditional. If the condition takes place during the insolvency process the claim shall be terminated but if the condition occurs before the final distribution of the estate the sums paid to the creditor shall not be returned. The remaining part of the claim is terminated as a result of the peremptory condition's occurrence.

There are no legal obstructions for a claim acquired at a discount to be enforced in full.

Any interest that accrued after the opening of an insolvency case could be claimed by a creditor but if the interest is on non-secured claims it shall be satisfied following the complete satisfaction of the rest of the creditors.

Modifying creditors' rights

32 May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

The court cannot change the rank given to the claims by the law. The court could change the rank as defined by the creditor in its application for a claimed receivable. After the insolvency administrator registers the receivables in the lists of claimed receivables each creditor is entitled to object such claim and the given rank. The insolvency court calls a hearing where discusses all objections and takes in consideration all given evidence. Depending on the evidence the court could change the rank of a claimed receivable (eg, from secured to unsecured). Such a procedure is common and occurs often, almost in all insolvency proceedings.

Priority claims

33 Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

The creditors in the insolvency process may be divided into three categories according to the type of their claims: secured, unsecured and creditors whose claims are satisfied following the full satisfaction of the rest of the creditors. All claims are arranged in rows in accordance with the order of claims prescribed by the law.

In the group of secured claims the major privileged ones are claims secured by a pledge or mortgage and the claims against which a right of lien is exercised. The secured claims are satisfied by the realisation of the security.

The claims for insolvency expenses, claims arising from employment relations that have emerged before the date of the decision for initiation of the insolvency proceedings, maintenance owed by the debtor to third persons and public claims of the state such as taxes may have priority over secured claims only if the secured claims have emerged after the date of the decision for initiation of the insolvency proceedings and are not paid on the due date.

Employment-related liabilities in restructurings

34 What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

The employment contracts may be terminated by the employer with a notice period of one month when the employer ceases its business activity. The employment relationship does not terminate during a restructuring of the employer. In the event of enterprise transfer (eg, as a part of restructuring plan) the rights and obligations of the employer before the change are sustained with the new owner of the enterprise. The liability of the employers may be joint or several, depending on the type of restructuring.

The claims of employees which have emerged before the date of the court's decision for the initiation of the insolvency proceedings are ranked fourth in the order of claims.

The Act on Guaranteed Claims of Employees in the Event of the Employer's Insolvency governs conditions under which the employees' claims arise after lay-offs due to insolvency and the amount of claims guaranteed by a special fund established under the act. The employees' claims are guaranteed for an amount of up to six monthly salaries left unpaid in the 12 months prior to the termination of the employment contract. The claims of employees that are not guaranteed by the fund can be brought in the insolvency proceedings and would be in the seventh row in the order of claims.

Pension claims

35 What remedies exist for pension-related claims against employers in insolvency proceedings and what priorities attach to such claims?

State claims for mandatory social security contributions of the employer for pension funds are satisfied preferentially on the sixth row in the order of claims prescribed by the CA.

However, the pension claims are in general secured by the guarantee fund, mentioned in question 34. Along with the payment of guaranteed claims of the employees', the employer pension contributions due (for the state public insurance) and the health-care contributions are also paid by the guarantee fund in the event of employer insolvency.

Environmental problems and liabilities

36 In insolvency proceedings where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Bulgarian legislation does not set out any provisions concerning cases in which there are environmental problems in insolvency proceedings. As long as the debtor still operates, he or she, as a legal entity, is responsible for any damages caused. The insolvency administrator, creditors, the debtor's officers and directors, or third parties bear no liabilities on behalf of the insolvency estate unless caused by their own fault. If assets are insufficient to prevent any arising problems, municipal authorities bear responsibility for their prevention.

Liabilities that survive insolvency proceedings

37 Do any liabilities of a debtor survive an insolvency or a reorganisation?

Unsatisfied liabilities may be restored if within a year of an insolvency termination amounts set aside for disputed claims are released or new assets discovered. The proceedings are resumed after a written request of a debtor, creditor or after confirmation by a court decision in a separate litigation.

With reorganisation plans, debts only survive the termination of the insolvency proceedings if and to the extent they are specified in the reorganisation plan as it may provide for a deferment or rescheduling of payments. If the debtor does not perform his or her obligations under the plan, the creditors whose claims have been transformed by the plan may request the resumption of the insolvency proceedings. The liabilities of the debtor survive in the new insolvency proceedings, but the transformative effect of the plan concerning the creditors' rights and the remedies is preserved.

Distributions

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

The distribution of the amounts, collected after the compulsory sale of assets, is carried out when sufficient cash funds have been accumulated in the insolvency estate. The insolvency administrator drafts a bill for the distribution of the available amounts among the creditors with admitted claims in conformity with the order, the privileges and the remedies prescribed by the law. The distribution bill is considered

Update and trends

The legal system of Bulgaria is in a continuous process of aligning itself with the European Union's and the world's standards in insolvency proceedings and constituting a legal practice in accordance with European Union legislation, ensuring equal rights and possibilities for both Bulgarian and foreign creditors and debtors in insolvency proceedings.

partial until the debts have been paid in full or the entire insolvency estate (except the objects deemed unsellable) has been converted into cash.

The final distribution is carried out after the insolvency court approves the distribution account. The insolvency court can make changes to the distribution bill if there are defects established ex officio or following an objection for non-compliance with mandatory provisions of the law. The approved bill is then published in the Commercial Register and is executed by the insolvency administrator. Distributions pursuant to a reorganisation plan are not restricted by the terms of the CA and, therefore, payments to creditors should be consistent with what has been agreed between them in the plan.

Transactions that may be annulled

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

Once insolvency proceedings have been commenced and reach the phase of constitution of the insolvency estate, some transactions or actions of the debtor may be considered void by law in respect to the creditors, and others may be revoked in a further litigation led by the insolvency administrator, or by the creditors if he or she refuses to exercise his or her rights on the matter. In general all actions and transactions harm the amount of the insolvency estate by decreasing it (eg, performance of a debt that has emerged prior to the date of the decision for initiation of the insolvency proceedings or arrangement of a pledge or a mortgage on rights or objects included in the insolvency estate, etc).

The activities and transactions subject of annulment should be carried out by the debtor within the period from the initial date of the illiquidity, respectively, the over-indebtedness to the date of the petition for opening of insolvency proceedings.

Another group of for acts and transactions could be annulled if they harm the insolvency estate and are performed after the date of submission of the petition for initiation of insolvency proceedings.

An action for invalidation must be brought before the court and if successful, the act or transaction is annulled in respect to the creditors.

Proceedings to annul transactions

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

The period between the initial date of illiquidity or over-indebtedness, determined by the insolvency court, and the submission date of the petition for initiation of the insolvency proceedings is known in the legal doctrine as the 'suspect period'. A series of legal transactions committed by the debtor in this period can be revoked by law or by the insolvency administrator through an action brought before the competent court. Should he or she fail to do so, any insolvency creditor can exercise this power within one year following the initiation of proceedings. When the claim is brought by a creditor, the court shall constitute the administrator in the insolvency proceedings as a joint applicant ex officio.

The suspect period for the invalidation claims set out in article 647, CA is calculated differently. Here the date of illiquidity or over-indebtedness is not a constituent element. Instead, the suspect period for these types of claims begins from the submission date of the petition for initiation of insolvency proceedings.

Directors and officers

41 Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

In principle, the corporate officers and directors are not liable to third parties for obligations owed by the companies they represent. Only the company can be held liable for their actions. Personal liability of a manager or a management board member can only arise in a few exceptional cases specifically listed in the Commerce Act.

The corporate officers and directors are liable for any damages caused to the company through a fault.

Failure to comply with the obligation of filing a petition for initiation of insolvency proceedings leads to joint and several liability of the representatives with the debtor company before the creditors for any damages caused and a criminal liability (see question 13). Intentionally conducting a business activity in a way leading to insolvency is also a crime under the Criminal Code. Many actions of the merchant or his or her competent bodies in the insolvency procedure can also lead to criminal liability if done intentionally: concealing assets of the company, concluding further contracts or transaction while knowing that their performance is impossible, sabotaging reorganisation plans, violating the order of claims, hiding or destroying accounting books, etc.

Groups of companies

42 In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

Bulgarian legislation does not contain any special rules about the parent company or affiliated company's responsibility for the liabilities of subsidiaries and insolvency proceedings involving corporate groups. In principle, neither the parent nor the affiliated companies can be held liable for the obligation of subsidiaries or affiliates. The respective entity could be responsible on the grounds of an agreement (guarantee, warranty, etc), signed with its affiliate or subsidiary. There are no specific rules for pro rata distribution of group company assets. The law foresees individual court proceedings for each debtor. In case of insolvency of a group of companies each company of the group is a subject of a separate court proceedings. The court is not able to decide on the assets of a debtor from the group which is not subject of the process, led by the same judge.

Insider claims

43 Are there any restrictions on claims by insiders or non-arm's length creditors against their corporations in insolvency proceedings taken by those corporations?

Specific restrictions can be found in the Act on Guaranteed Claims of Workers and Employees in the Event of Employer's Insolvency. The guaranteed amount of the receivables, ensuing from employment relations, are not paid to employees who, on the initial date of insolvency, have been partners in the merchant company, members of the managing or supervisory boards of the merchant or are spouses or relatives of the entrepreneur, or of the persons under the previous two items.

Under the BIA, members of the managing board, people working for the Bank Claims Guarantee Fund, cannot acquire in any way whatsoever, directly or through another person, a possession or a right of the bank's insolvency estate. This restriction also applies to the spouses and relatives of such persons.

Creditors' enforcement

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

The Special Pledge Act allows the creditor to enforce his or her claims out of court among properties secured by a special pledge. The secured creditor may file for enforcement and appoint a special enforcement officer (depositary) who commences the compulsory sale procedure. The compulsory sale itself is carried out by the secured creditor with due diligence, but any amounts collected are paid to the depositary.

The depositary draws up a distribution bill and notifies all creditors and the debtor. The bill can be appealed before the district court. The

amounts are distributed in a specific order specified by the law. If any amounts remain after the distribution, they are returned to the debtor.

The initiation of the insolvency proceedings cannot interfere with this type of enforcement.

Corporate procedures

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

Voluntary liquidation procedures specified in question 9 apply to corporate legal persons. The general meeting of shareholders has the right to terminate the company. Majority or quorum requirements that differ from those in law may be set in the articles of association.

The resolution for termination is published in the Commercial Register along with the appointed liquidators and invitation to all creditors. The liquidator supervises and manages the termination of the company.

In contrast to insolvency proceedings, voluntary corporate liquidation usually takes place without the intervention of the court, since the company has enough assets to satisfy all outstanding claims. The debtor remains in control of the company through the appointed liquidator. Compulsory sales cannot be enforced by creditors and the liquidator is free to choose the method of asset liquidation. If any amounts remain after all creditors have received satisfaction, they are distributed between shareholders as liquidation shares.

Conclusion of case

46 How are liquidation and reorganisation cases formally concluded?

The liquidation and the reorganisation cases are formally concluded by a judicial act of a relevant authority.

In voluntary liquidation, a corporation is considered dissolved when the Commercial Register enters it in the company file.

In general, the insolvency procedure is terminated by a court's decision if the debts have been paid, a reorganisation plan or out-of-court settlement have been adopted or when the insolvency estate has been depleted. In the event of the latter the merchant is deleted from all registers.

International cases

47 What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

As an EU member state, the relations regarding the cross-border insolvency proceedings in Bulgaria are regulated under the European law such as Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings.

As soon as insolvency proceedings are opened in a member state, the competent court or the appointed liquidator will immediately notify known creditors who have their habitual residences, domiciles or registered offices in other member states.

According to the Regulation, the law of the state where the proceedings are initiated governs the conditions for their initiation, conduct, closure and creditor claims.

On conditions of reciprocity Bulgaria may recognise foreign judicial decisions that declare insolvency, provided they are passed by an authority of the state of the debtor's domicile. At the request of the debtor, insolvency administrator or a creditor, a Bulgarian court may institute subsidiary bankruptcy proceedings in respect of a merchant who has been declared bankrupt by a foreign court, in respect to the debtor's substantial assets in the country.

COMI

48 What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

As an EU member state, Bulgaria determines the COMI under the Regulation (EC) No. 1346/2000, according to which the COMI should correspond to the place where the debtor conducts the administration of his or her interests on a regular basis and is therefore ascertainable by third parties. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. The location of the COMI determines the court competent to initiate the insolvency proceedings.

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Cross-border cooperation

49 Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

The CA allows for a foreign (non-EU) competent court's decision to be admitted for execution provided there is a mutual agreement of reciprocity between the Bulgarian state and the state where the court issuing the decision on the insolvency is situated. A foreign insolvency administrator may legally exercise his or her powers under the foreign legislation in Bulgaria insofar as they are not in variance with the public order in Bulgaria (meaning they should not be in violation of human rights and the moral principles of Bulgarian and European society).

The acting legislation allows for a secondary insolvency procedure to be initiated in Bulgaria at the request of a foreign insolvency administrator, debtor or creditor to the Bulgarian court.

Bulgarian courts have the right to refuse to recognise foreign insolvency proceedings if they originate from a non-EU country that has no mutual agreement with Bulgaria on the matter, or if the decision of the foreign court or measures prescribed contradict the established public policy in the country.

Cross-border insolvency protocols and joint court hearings

50 In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

Bulgarian courts have still not held joint hearings with courts in other countries or entered into cross-border insolvency protocols. Subsidiary insolvency proceedings have been initiated in regard to a foreign debtor's assets in the country as per Regulation (EC) No. 1346/2000.

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