Greece

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SECURITY AND PRIORITIES

1. What are the most common forms of security granted in relation to immovable and movable property? Are any specific formalities required for their creation and perfection (that is, made valid and enforceable)?

Immovable property

The most common forms of security granted in relation to immovable property are:

- **Mortgage (hypothec).** A mortgage gives a creditor a non-possessory security interest over the debtor's real property and a preferential right to have the debt paid out from the proceeds from the property at a public auction, as a last resort if the debtor defaults (*Articles 1257 and following, Civil Code*). Title to and possession of the property does not pass to the creditor.
- **Pre-notation mortgage.** A creditor can arrange to have its claim registered against the property. When the debtor defaults, the creditor can convert this registration into a mortgage. Once converted, the creditor's priority dates back to when the creditor registered the pre-notification, rather than to the conversion date. Creditors widely favour pre-notation mortgages due to their significantly lower costs.

Movable property

The most common forms of security granted in relation to movable property are:

- **Mortgage.** A creditor can take out a mortgage over a ship or an aircraft (*see above, Immovable property: Mortgage (hypothec)*). Any other movable property must be secured by a pledge.
- **Pre-notation mortgage.** A creditor can take out a pre-notation mortgage over a ship or aircraft (*see above, Immovable property: Pre-notation mortgage*).
- **Preferred mortgage.** A creditor can take a preferred mortgage over a ship or an aircraft. A preferred mortgage provides the creditor with the right to manage the ship or aircraft once the debtor defaults, and have the debt paid from money received from its management.
- **Pledge.** A debtor can pledge:
  - movable tangible property (for example, industrial equipment);
  - negotiable instruments (for example, securities, shares, and so on);
  - movable intangible property (for example, receivables, rights, intellectual property rights, patents, trade marks, and so on); and
  - bank accounts.

  A pledge can cover future rights as well as current ones.
- **Floating charge.** A creditor can take a floating charge over a debtor's business proceeds, debts, receivables and so on. This can include future rights as well as current ones (*Statute 2844/2000*).

Formalities

- **Mortgage.** A creditor perfects a mortgage by filing at the land registry where the property is situated:
  - a notary deed, court or arbitral decision, or any title provided by law (that is, a specific statutory provision granting the creditor the right to secure its claim against the debtor by means of a mortgage); and
  - two summaries of title.

  If more than one mortgage is registered against a property, priority is determined according to their registration dates. The registration must specify the specific value of the property which is secured. Special public registries exist with respect to aircraft and ships.
- **Pre-notation mortgage.** The formalities are the same as for a mortgage (*see above, Mortgage*). In addition, the creditor must register the pre-notation with the land registry.
- **Preferred mortgage over ships or aircraft.** This type of mortgage is perfected by a notary deed between the debtor and the creditor, which must be registered in the relevant public registries for ships and aircraft.
- **Pledge.** A pledge is perfected by agreement between the parties, followed by:
  - delivery of the asset to the creditor (*Civil Code*); or
  - registration in a public register, in which case the asset remains in the debtor's possession (*Statute 2844/2000*).

  A debtor can perfect a pledge of a negotiable instrument by endorsing the document to the order of the creditor, without any further written agreement. Delivery is still required.

  If a debtor pledges receivables or intangible property, it must give notice of the pledge to any third party against which the debtor has as claim arising from the receivables or intangible property, in addition to the agreement between the parties.

Country Q&A

- **Floating charge.** A floating charge is perfected by means of a pledge agreement registered with the public registry (*Statute 2844/2000*). The agreement must specify which group of movables or rights are subject to the pledge. The ownership of the assets which form part of the pledged group of assets can be transferred, on the condition that the debtor replaces them with items of the same total value without undue delay. The debtor must provide the creditor with periodic statements every three months listing the charged assets.

2. Where do creditors and shareholders rank on the insolvency of a company?

The following priority of payments applies during bankruptcy proceedings (*Articles 154 and following, Statute 3588/2007 (Bankruptcy Code)*):

- Costs incurred in the bankruptcy proceedings.
- Preferential claims, that is, employment, tax and social security claims.
- Secured claims which give the creditor possession of the relevant asset, that is, pledges and mortgages.
- Unsecured claims.

Shareholders who have entered into permissible transactions with the company rank together with creditors according to the priority of payments (*see above*). However, where a partner of a limited liability company grants a loan to the company, on insolvency his claim ranks after all of the company's other debts (*Article 32(3), Statute 3190/1955*). This does not apply to companies limited by shares (*sociétés anonymes*) (*Statute 2190/1920*).

If sale proceeds remain after an insolvent company's assets have been realised and all its creditors have been paid, shareholders receive this surplus in proportion to their shareholdings. In practice, this is highly unlikely to occur.

3. Are there any mechanisms used by trade creditors to secure unpaid debts?

Trade creditors use the following methods to secure unpaid debts:

- **Guarantee.** A third party can guarantee the performance of a debtor's obligations. A guarantee is void unless provided in writing.
- **Retention of title.** A creditor can use a reservation of title clause to retain ownership of an asset until the debtor has paid its full purchase price. A creditor can register a retention of title clause with a special registry, although this formality is not obligatory (*Article 10, Statute 2844/2000*).
- **Assignment.** A debtor can assign a claim against a third party to its creditor as security for performance of its obligations (*Articles 455 and following, Civil Code*). There are no specific formalities, other than notification of the assignment to the third party.
- **Pre-notation mortgage.** See *Question 1, Immovable property: Pre-notation mortgage.*

4. Are there any procedures (other than the formal rescue or insolvency procedures described in *Question 6*) that can be invoked by creditors to recover their debt?

Debtors can apply to court for the following:

- Interim measures to secure their debt, such as freezing injunctions.
- Compulsory administration. This is an enforcement measure where the debtor is deprived of the management of its real property or business, which is assigned to a judicial administrator by virtue of a court order. The administrator undertakes to manage the property or business to pay the debtor's debts. Compulsory administration is not an insolvency procedure, that is, it may apply despite the debtor not being eligible for bankruptcy.
- Converting a pre-notation mortgage into a mortgage (*see Question 1*).

However, creditors cannot launch individual enforcement proceedings once bankruptcy is declared.

STATE SUPPORT

5. Please give brief details of the availability of state support for distressed businesses (if any).

In 2008, the Greek state was able to use three measures to increase the liquidity of the Greek economy. This included (*Statute 3723/2008*):

- A recapitalisation scheme, where the state could inject up to EUR5 billion (about US$6.9 billion) into eligible banks in exchange for preference shares.
- A guarantee scheme, where the state could guarantee up to EUR15 billion (about US$20.8 billion) of new debt undertaken by an eligible bank.
- A securities scheme, where the state could issue special government bonds worth up to EUR8 billion (about US$11 billion) to eligible credit institutions.

Most recently, in 2008 state funds were used to inject cash into Greek banks to finance certain projects.

Otherwise, there are no specific Greek statutory provisions that regulate state support for distressed businesses, although EU state aid rules apply.

RESCUE AND INSOLVENCY PROCEDURES

6. Please briefly describe rescue and insolvency procedures available in your jurisdiction. In each case, please state:

- **The objective of the procedure and, where relevant, prospects for recovery.**
- **How it is initiated, when, by whom and the companies it can be applied to.**
- **Substantive tests that apply (where relevant).**
- **How long it takes.**
- **The consents and approvals required.**
- **The effect on the company, shareholders and creditors.**
- **How the procedure is formally concluded.**

Bankruptcy

- **Objective.** Bankruptcy proceedings aim to repay creditors and also, if possible, rescue and restructure an insolvent company's business. The relevant legislation is the Bankruptcy Code.
- **How, when, by whom and to which companies.** A Bankruptcy Court supervises bankruptcy proceedings. This is a three-member court of first instance in the region where the debtor has its key establishment. The following parties can initiate bankruptcy proceedings, by filing a petition with the court:
  - the debtor;
  - if the company has ceased its payments (*see below, Substantive tests*), any of its creditors; or
  - in certain circumstances, the public prosecutor, on the grounds of public interest.

  Even if the substantive tests are met (*see below, Substantive tests*), the court may decide not to declare the debtor bankrupt if:
  - the company's assets will not cover the costs of insolvency proceedings; or
  - the bankruptcy petition indicates that the applicant has exercised its rights abusively, for example, if the debtor has filed the petition only to avoid paying its debts.

  Bankruptcy proceedings can apply to any merchant (*Bankruptcy Code*). This includes:
  - individuals (but not individuals who exercise professional activities, such as doctors or lawyers, who cannot be subject to bankruptcy proceedings);
  - companies limited by shares;
  - limited liability companies;
  - general partnerships; and
  - although they are not merchants, associations which pursue economic activities.

  To be eligible, the merchant must be domiciled in Greece. This means that a company must have a seat in Greece for the Greek courts to establish jurisdiction over bankruptcy proceedings.

  A simplified procedure, known as accelerated insolvency, applies to bankrupt estates that (*Articles 162 and 163, Bankruptcy Code*):
  - are valued at less than EUR100,000 (about US$138,575); and
  - contain no immovable property.

  This procedure is simpler because less time is spent on valuing the debtor's assets, which reduces the court's workload, and delays in paying creditors.
- **Substantive tests.** The debtor can file a bankruptcy petition when the company is:
  - in present or foreseeable financial difficulty (that is, has cashflow problems but has not reached more severe insolvency tests); or
  - about to become permanently unable to pay its future debts as they fall due.

  The debtor must, and the creditors and public prosecutor can, file a bankruptcy petition when a company has permanently ceased its payments, that is, has stopped paying its debts as they become due.
- **How long.** Bankruptcy proceedings tend to last several years. They cannot last longer than:
  - ten years from when the creditors' assembly first meets (*Article 166(3), Bankruptcy Code*); and
  - 15 years from the declaration of bankruptcy.

  Accelerated insolvency proceedings are quicker, but as the Bankruptcy Code has only recently been enacted, there is no conclusive evidence on their average length (*see above, How, when, by whom and to which companies*).
- **Consents and approvals.** Creditor or shareholder consent is not required for bankruptcy proceedings.
- **Effect.** Bankruptcy proceedings have the following effects:
  - all the debtor's assets form part of the bankrupt estate;
  - the debtor cannot manage its business, unless the court grants it a specific right to do so. The court is highly unlikely to grant this right, and will only do so if the debtor has filed a bankruptcy petition on its own initiative (*Article 18, Bankruptcy Code*);
  - the court appoints an administrator to continue running or liquidate the business;
  - all unsecured debts become due and cease accruing interest;
  - creditors cannot take individual enforcement measures (*see Question 4*);
  - contracts which are of a personal nature and strictly related to the debtor are terminated; and
  - legal entities declared bankrupt are liquidated.
- **Conclusion.** Bankruptcy proceedings end:
  - following the liquidation of the bankrupt estate and payment of creditors;
  - with a restructuring plan (*see below, Restructuring plan*); or
  - when the relevant time limits elapse (*see above, How long*).

Restructuring plan

- **Objective.** A restructuring plan is a bankruptcy procedure, which aims to help the debtor restore its credibility and viability, and continue its operations beyond bankruptcy. There is no record of a restructuring agreement ever having been approved, due to creditors' reluctance to consent to them.
- **How, when, by whom and to which companies.** Either of the following parties can file a petition with the Bankruptcy Court for a restructuring plan (*Article 108, Bankruptcy Code*):
  - the debtor, either as part of its bankruptcy petition or as a separate petition filed within four months of a declaration of bankruptcy; or
  - the administrator of a bankrupt estate, within three months of the debtor's four-month filing window having lapsed (*see above*).
- **Substantive tests.** There are no substantive tests. However, the court may reject a proposed restructuring plan if:
  - it considers that it is unlikely that the creditors will enter into it; and
  - its terms do not ensure that the debtor will pay its creditors.
- **How long.** Once the court approves a restructuring plan, creditors must approve it within three months (*see below, Consents and approvals*). Otherwise, there are no time limits.
- **Consents and approvals.** The plan must be approved by creditors which represent at least 60% of all the debtor's debts, including 40% of secured claims.
- **Effect.** Once creditors have consented to a restructuring plan, the administrator, together with the interested party or parties, present it to court for approval. Once approved, a restructuring plan has the following effects:
  - it binds all secured and unsecured creditors, irrespective of whether they approved it;
  - bankruptcy proceedings end;
  - the debtor can start running the business again, unless the plan provides otherwise (the court can give a third party the right to run the business instead);
  - unless the relevant creditor objects, claims against the debtor's guarantors and joint debtors are reduced in proportion with the debt reduction proposed under the restructuring plan; and
  - creditors cannot take individual enforcement measures against the debtor.
- **Conclusion.** The proceedings end when the restructuring has taken place.

Insolvency conciliation

- **Objective.** Insolvency conciliation is a pre-bankruptcy measure that aims to help the debtor rescue and restructure its business. Articles 99 and following of the Bankruptcy Code regulate the proceedings.
- **How, when, by whom and to which companies.** A debtor initiates insolvency conciliation proceedings by filing a petition with the Bankruptcy Court. Insolvency conciliation can apply to any merchant (*see above, Bankruptcy: How, when, by whom and to which companies*).
- **Substantive tests.** To apply for insolvency conciliation proceedings, the debtor must be in a state of financial distress, that is, have cashflow problems but not have reached any of the tests required for bankruptcy proceedings (*see above, Bankruptcy*).

  In addition, the court will only allow bankruptcy proceedings if it is satisfied that:
  - creditors are likely to negotiate and eventually enter into an agreement with the debtor; and
  - rescuing the business will benefit its employees.
- **How long.** The parties must reach an agreement within two months, with a possible one-month extension period. If the parties do not reach an agreement within this time limit, the court discontinues the proceedings (*Articles 100(1) and (2), Bankruptcy Code*). Once the parties execute an agreement, they must present it to court within ten calendar days. Once the court has accepted an agreement, the ensuing conciliation proceedings cannot last longer than two years.
- **Consents and approvals.** A conciliation agreement must be approved by creditors that represent more than half of the company's debt.
- **Effect.** Insolvency conciliation proceeds as follows:
  - the court appoints a mediator to help the debtor and its creditors reach an agreement to rescue or restructure the debtor;
  - once an agreement is reached, the mediator presents it to court (*see above, How long*); and
  - the court accepts or rejects the agreement.

  Once the court accepts an agreement:
  - the agreement binds the debtor and the creditors that are party to the agreement;
  - creditors cannot undertake individual enforcement actions until the restructuring ends;
  - the debtor can issue cheques;
  - time limits that apply to creditors' rights are suspended until the restructuring has ended; and
  - creditors cannot petition for the debtor's bankruptcy for six months.

  The court may reject an agreement if:
  - it does not ensure that the business will continue in the long run;
  - it is detrimental to the interests of creditors which are not party to it;
  - it has a term which is greater than two years; or
  - the debtor has become insolvent while insolvency conciliation negotiations have been taking place (*see above, Bankruptcy: Substantive tests*).

- **Conclusion.** Once the court has accepted an insolvency conciliation agreement, it becomes binding on the debtor and all the contracting parties, and conciliation proceedings come to an end.

7. What type of stakeholder has the most significant role in the outcome of the restructuring?

Banks and credit institutions are key stakeholders during restructuring procedures, because they typically represent more than half the debtor's outstanding claims, so their consent is required for a restructuring plan or an insolvency conciliation plan (*see Question 6, Restructuring plan* and *Insolvency conciliation*).

LIABILITY AND TRANSACTIONS

8. Are there any circumstances in which a director, parent company (domestic or foreign) or other party can be held liable for the debts of an insolvent company?

Directors

Directors of limited liability companies and companies limited by shares can be liable, together with the company, for any tortious act or omission that took place during their management or representation of the company (*Article 71, Civil Code*).

In addition, a director can be liable for failing to apply for bankruptcy once it meets the conditions for bankruptcy (*see Question 6, Bankruptcy: Substantive tests*) (*Article 98(1), Bankruptcy Code*). This liability will cover the debt accrued between:

- The date when bankruptcy should have been petitioned.
- The date when bankruptcy was declared.

If a court finds that the directors deliberately or through gross negligence contributed to a company's bankruptcy, it can hold the directors liable to indemnify the company's creditors for the damage which they suffered as a result (*Article 98(2), Civil Code*).

Parent companies

A parent company of a partnership is liable for its subsidiary's debts, and will be declared bankrupt together with a partnership (*Article 7(4), Bankruptcy Code*).

A parent company of any other type of company cannot be held liable for its debts due to the doctrine of separate legal personality, unless the parent company's tortious or grossly negligent actions or omissions caused the subsidiary's insolvency. In this case, the directors can be held liable for these actions or omissions. This liability can also extend to other persons who influenced the directors in these actions or omissions (*Article 98, Bankruptcy Code*).

Shareholders of companies limited by shares can be liable for the company's subsidiary's debts in certain circumstances. In particular, if the court establishes that the shareholders used the company's legal personality abusively to avoid legal obligations, it may lift the corporate veil and hold the shareholders liable.

9. Can transactions that are effected by a company that subsequently becomes insolvent be set aside?

Before the declaration of insolvency proceedings on the debtor, with respect to transactions which the debtor has carried out with a third party, creditors can demand to be put back in the position in which they would have been, had a transaction not been carried out, if all the following conditions are met (*Articles 939 and following, Civil Code*):

- The transaction was carried out with the intention of prejudicing creditors.
- The transaction caused the debtor's insolvency.
- The third party beneficiary knew that the transaction was being carried out in order to prejudice creditors.

If the transaction was carried out for no consideration, the third party is liable even if it acted in good faith.

The transaction can be set aside whether or not it took place within the suspect period (*see below*).

During bankruptcy proceedings, an administrator can revoke transactions which both:

- Took place within the suspect period, that is, the period following the debtor's cessation of payments (*see Question 6, Bankruptcy: How, when, by whom and to which companies*).
- Are detrimental to creditors, in the administrator's opinion (*Article 41, Bankruptcy Code*).

The administrator must revoke the following transactions (*Article 43, Bankruptcy Code*):

- Donations made to the debtor, unless this was given out of social courtesy (for example, a tip), or as part of a moral or legal obligation.
- Payments of debts which are not yet due.
- Payments of due debts by means other than cash.
- The provision of security to formerly existing claims.

10. Please set out any conditions in which a company can continue to carry on business during insolvency or rescue proceedings. In particular:

- **Who has the authority to supervise or carry on the company's business?**
- **What restrictions apply?**

Generally, during bankruptcy proceedings the administrator can take over the management of the debtor's business and property, unless the court has specifically stated that the debtor should do so. However, this is unusual, because the company is typically liquidated during bankruptcy proceedings. See *Question 6, Bankruptcy*.

Country Q&A

If a restructuring plan is put in place, the debtor typically takes back the running of the business. The court can give a third party other than the administrator or the debtor the power to manage the debtor's business. See *Question 6, Restructuring plan*.

During insolvency conciliation proceedings, the debtor retains full control of its business (*see Question 6, Insolvency conciliation*).

INTERNATIONAL CASES

11. Please state whether:

- **Courts in your jurisdiction recognise insolvency and rescue procedures in other jurisdictions.**
- **Courts co-operate where there are concurrent proceedings in other jurisdictions.**
- **There are any international treaties relating to insolvency to which your jurisdiction is a signatory.**
- **There are any special procedures that apply to foreign creditors.**

- **Recognition.** Greek courts automatically recognise:
  - judgments opening insolvency proceedings that have been handed down by courts of EU member states; and
  - insolvency proceedings imposed by courts (or any other competent bodies) of EU member states on an insurance undertaking or credit institution.

  Greek courts will recognise and declare enforceable any other foreign judgment if it (*Articles 323(2) to (5) and 905(3), Civil Procedure Code*):
  - has been issued in accordance with the foreign jurisdiction's laws;
  - deals with a specific private dispute;
  - is executable (either finally or provisionally) in accordance with the foreign jurisdiction's laws;
  - addresses a case which the courts of that jurisdiction were competent to hear;
  - was issued after observance of the unsuccessful party's right to participate in the proceedings and right of defence;
  - is not contrary to any Greek judgment between the same parties; and
  - is not contrary to Greek public order or social policy.
- **Concurrent proceedings.** Greek courts recognise secondary insolvency proceedings in EU jurisdictions. Otherwise, they do not recognise concurrent foreign proceedings.
- **International treaties.** Greece is a signatory to:
  - Regulation (EC) No. 1346/2000 on insolvency proceedings;
  - Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

  Greece is not a signatory to the UNICTRAL Model Law on Cross Border Insolvency 1997, or any other international insolvency-related treaties.
- **Procedures for foreign creditors.** There are no separate procedures for foreign creditors.

PROPOSED REFORMS

12. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

The Bankruptcy Code was introduced in 2007, with the intention of modernising insolvency proceedings. As this legislation is still relatively recent, there are no current proposals for reform or plans to review the legislation's effectiveness.

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