

# Greece



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## 1 Issues Arising When a Company is in Financial Difficulties

### 1.1 How does a creditor take security over assets in your jurisdiction?

The creditor can take security over assets in three ways:

- provisional seizure;
- restraining orders; and
- compulsory administration.

### 1.2 In what circumstances might transactions entered into whilst the company is in financial difficulties be vulnerable to attack?

Certain transactions entered into during the "*suspect period*" (a period extending backward in time from the judgment opening the bankruptcy case) may be challenged as void. The duration of the "*suspect period*" is defined by the Court's decision and cannot exceed a period of two (2) years.

In cases where the Courts have not set the exact date regarding the cessation of payments, the "*suspect period*" begins ten (10) days before the issuing of the Court's decision which declares the company bankrupt.

In any case transactions cannot be entered into when they result in a loss of value of the company's assets and have a detrimental effect to any creditor's claims.

### 1.3 What are the liabilities of directors (in particular civil, criminal or disqualification) for continuing to trade whilst a company is in financial difficulties in your jurisdiction?

The managing directors of a company, who perform trading actions, act as legal representatives of the company. In cases where the managing director intentionally aims to defraud the creditors he is faced with civil and criminal sanctions by virtue of Article 914 of the Greek Civil Code, relating to intentional bankruptcy.

All trading actions taken by the board of directors during the "*suspect period*" are void.

### 1.4 Is it common to achieve a restructuring outside a formal procedure in your jurisdiction? In what circumstances might this be possible?

The Development Law 2601/1998 in effect, aims to strengthen,

restructure and finally revive companies under economic distress. For this reason, the law grants the power of integration to problematic companies, via a decision of the Minister of National Finance and Economy.

#### Requirements:

The indebted companies need to display great financial inability and while playing a significant part in the country's economic growth. Such companies are revived through governmental economic aid.

## 2 Formal Procedures

### 2.1 What are the main types of formal procedures available for companies in financial difficulties in your jurisdiction?

The main types of formal procedures available for companies in financial difficulties are:

- company restructuring;
- special liquidation; and
- bankruptcy procedure.

### 2.2 What are the tests for insolvency in your jurisdiction?

See answer to question 2.3

### 2.3 On what grounds can the company be placed into each procedure?

#### Company Restructuring

Aside from the bankruptcy process, Articles 44-46A of law 1892/1990 (as supplemented & amended by a series of sector-specific legislation since then), provide for various types of "*receivership/liquidation & sale*" of a company with the objective either to continue its operation under recovered financial conditions its operation through a new corporate structure or to be sold free of "*debts & liabilities*" to a new operator.

The legal principles which govern the restructuring of problematic and over indebted companies can be distinguished in two stages:

- The first stage refers to the completion of an agreement between the creditors and the company. The said agreement can be achieved either directly between the contracting parties (Art. 44 of Law 1892/1990) or through the mediation of the "*special administrator*" (Art. 45). This agreement is completed and ratified by the Court of Appeal (located in the

area of the legal seat of the company) and is then binding for all creditors.

- b. The second stage of the legal framework of Company Restructuring refers to the "*special liquidation*" to which Articles 46, 46a, 46b, 46c of Law 1892/1990 apply.

Companies which can be brought under this provision.

- a. A company which has suspended or interrupted its operation for financial reasons (lack of liquidity).
- b. A company which has stopped payments (for a minimum of 6 months). The cessation of payments refers to a state in which the company is unable to satisfy its current liabilities as soon as they become due with its available assets.
- c. A company which is or has been placed under bankruptcy, or under "*forced administration*" by its creditors.
- d. A company which manifests financial inability to pay its due debts and/or where the sum of its debts is five (5) times larger than the company's capital, would legally "qualify" to be placed in such a "*special liquidation status*". (Art. 5&1c of Law 1386/84.)

Another substantial requirement of Art. 45 is the written consent of the majority of the shareholders of the company. Furthermore, the property/assets of the company must not have been auctioned. (Art. 45&10 of Law 1892/90.)

The creditor's claims are duly recorded in the general ledger book as "*creditors balance*", prior to filing the petition. A creditor can at the same time be a shareholder of the company.

**Bankruptcy**

There are certain prerequisite conditions (substantial and also formal) to the declaration of a company as bankrupt.

1. Substantial

- a. The legal "qualification" for bankruptcy of the natural and legal persons.
- b. The termination of payments.

It has to be noted that the "inability to pay" must be a permanent condition.

2. Formal

Issuing of the Court's Decision

- 2.4 Please describe briefly how the company is placed into each procedure.

**Bankruptcy**

Provided that the necessary requirements are met, a company is declared bankrupt by virtue of the Court's decision. The Court can reach this decision after an application filed by any commercial creditor (regardless of the nature of his claims) or by the company after a cessation of payments.

**Special Liquidation**

According to Law 1892/1990, in order for an over indebted company to be placed under the Art. 46, "*special liquidation*" procedure, an application has to be filed and two substantial requirements have to be met:

- a. The company is required to manifest financial inability and display a state of economic crisis.
- b. The creditor/s must represent 20% of the total of the company's due debts.

The formal requirement is the issuing of the Court's decision.

As a matter of law, the creditors supervise this whole process and they can intervene at any time or stage to protect their interests.

They may also request a revocation of the appointment of the "*administrator*" or even a revocation of the Court decision which placed the company under Art. 46A.

- 2.5 What notifications and meetings are required after the company has been placed into each procedure?

**Company Restructuring**

A notification of the petition concerning the ratification of the agreement is required. The petition is lodged at the Court of Appeal by the indebted company or from at least one of the contracting creditors. It must be notified to:

- a. The creditors of the company who were not part of the agreement, when they happen to be: the Greek Government; the national social security institution; other security institutions; and Governmental enterprises.
- b. Public and/or Private Institutions which have secured claims over the company's assets.

**Special Liquidation**

In order to proceed with the seizure of the company's assets, the "*special administrator*" is required to draft a "*declaration*" within which all the company's assets (subject to seizure) are described. This "*declaration*" is notified from the "*administrator*" to the company and registered with the competent Registrar of Mortgage Deeds.

**Bankruptcy**

The notifications refer to the decision declaring the company bankrupt and present a necessary requirement for the commencement of the deadline for lodging an appeal, and/or other legal remedies.

- 2.6 How does somebody establish whether the company has been placed into one of these procedures?

The existence or absence of a bankruptcy procedure against a company can be established through a certificate obtained by the Court of the legal seat of the company.

### 3 Creditors

- 3.1 Are unsecured creditors free to enforce their rights in each procedure?

See answer to question 3.2

- 3.2 Can secured creditors enforce their security in each procedure?

"*Secured creditors*" are those whose claims are secured with a title/mortgage or special privilege over a bankrupt company's assets.

**Company Restructuring**

In the "restructuring process" the "*secured creditors*" are equal with all the other "simple creditors", the security which they have over assets gives them no privilege.

Consequently, in this procedure, the interest of the secured creditors is also harmed as they lose their preferential treatment provided by the bankruptcy law. This is because the "*restructuring process*" aims in the "*sacrifice*" of the creditor's claims whether secured or unsecured with respect to the company (over indebted but viable).

**Special Liquidation**

The same principles apply to the "special liquidation" procedure.

**Bankruptcy**

The "secured creditors" hold a peculiar place in the bankruptcy procedure. They obtain a certain privilege, in cases where they exercise their security. In any other case, they are treated as "unsecured creditors". Following the bankruptcy of the company, "secured creditors" can proceed with the process of "compulsory execution" under two (2) conditions.

- a. The claim is realistically satisfied.
- b. The personal "compulsory execution" has started prior to the "unification of creditor's". In any other case, the assets can be sold only by the "special administrator".

The "unsecured creditors" are unable to proceed with personal measures of "compulsory execution", due to the fact that the bankruptcy procedure itself suspends measures of this nature.

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- 3.3 Can creditors set off sums owed by them to the company against amounts owed by the company to them in each procedure?
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**Special Liquidation**

Under this procedure the "special receiver/administrator" can set off sums owed by creditors to the company and vice versa.

**Company Restructuring**

In the process of restructuring the company there cannot be any offset because if that happened, the creditor would be satisfied for the claim in total by setting off to the expense of the rest of the creditors who would be obliged to "sacrifice" their claims during this procedure.

**Bankruptcy**

If the requirements for the setting off (Art. 440 Greek Civil Code) were met before the company was declared bankrupt, this setting off can be completed after the company has been declared bankrupt.

For the setting off sums concerning the Government, the limitation is that the relevant taxation must have been imposed before the company has been declared bankrupt.

## 4 Continuing the Business

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- 4.1 Who controls the company in each procedure? In particular, please describe briefly the effect of the procedures on directors and shareholders.
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**Company Restructuring**

The "administrator":

- a. Does not control the company's assets like in the bankruptcy procedure.
- b. Does not have the right to represent or substitute creditors.
- c. Does not have administrative powers as such.
- d. Does not substitute the members/legal representatives of the company.
- e. He is controlled and supervised by the Court and coexists with the legal representatives of the company.

**Special Liquidation**

The "administrator":

The control of the administrative members of the company ceases to exist the day after the issuing of the Court of Appeals decision,

which appoints the "administrator". The "administrator" is representing the company.

The publication of the Court's decision under the "special liquidation" procedure of Art. 46 does not mean the "ipso jure" termination of the legal entity of the company; this is due to the fact that Art. 46 applies to the administration of the company and not the company as a legal entity.

**Bankruptcy**

The "special administrator-receiver":

Within three (3) days from the appointment, the "receiver" applies for the "unsealing" of the company's assets and proceeds to the completion of the inventory. He then receives the administration of the bankrupt's property.

The law provides for certain actions for the "receiver".

Such actions include: the collection of claims; legal actions; selling the bankrupt's property; and continuation of trading.

Any action taken by the "receiver" which goes beyond his powers is void.

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### 4.2 How does the company finance these procedures?

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The financing of these procedures, comes from the liquidation of certain tangible assets of the company, following an order from the Judge within which the description of the necessary procedure (private or public auction) is drafted.

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### 4.3 What is the effect of each procedure on employees?

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**Special Liquidation**

The day after the filing of the application at the Court of Appeal regarding the placement of the company in "special liquidation" is considered to bring the "ipso jure" termination of the employment agreements. There is discretion as to the temporary stay of the personnel in the company (Art. 46a of Law 1892/1990).

According to Art. 46 of Law 1892/1990, a company which displays financial inability and has stopped payments is placed under "special liquidation" after the decision of the Court of Appeal, of the legal seat of the company, or after the filing of the petition from the creditor/s who/which represent at least 20% of the total claims.

The employees are protected during the time the "special liquidation" procedure (Art. 46a) and are treated more favourably and in deviation from Art. 46&5. According to para. 2 subsection 2 of Art. 46a. The Court of Appeal of the legal seat of the company orders for the temporary staying of part or the whole of the company's personnel under "special liquidation", under two (2) conditions:

- a. The existence of a justified report of the creditors who lodged the petition (51%); and
- b. The interests of the "special liquidation" procedure are protected.

At this point there appears to be a problem presented as to how the choice is going to be made regarding the selection of those who will be dismissed and if so, compensated.

According to the most appropriate and legally justified opinion, the workers will be compensated, meaning that they will be placed as privileged in the board of creditors before every one else. (In the procedure 2 of Art. 46a of Law 1892/1990.)

**Bankruptcy**

The table of creditors' claims is covered by the Code of Civil Procedure (Art. 975 and following), as amended by the provisions

laid down in the Bankruptcy Law (Articles 579, 581, 648 Code of Civil Procedure).

The contract's claims for provided services (employment), which were completed within the last two (2) years before the day the company was declared bankrupt, belong to the third (3rd) class of privileged claims by virtue of Art. 975 paragraph 3 as amended by Art. 31 of Law 1545/1985, which clearly states that such claims will be classified regardless of when they were legally "qualified" for that classification.

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#### 4.4 What effect does the commencement of any procedure have on contracts with the company and can the company terminate contracts during each procedure?

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##### **Special liquidation**

The placement of a company into "*special liquidation*" does not necessarily mean an "*ipso jure*" termination of the pending contracts which were binding for the company before the commencement of this procedure unless there is a specific clause within the contract.

The "*special receiver/administrator*" can execute the contract demanding the other contracting party to honour its obligations. On the contrary, i.e. when the "*special receiver/administrator*" does not intentionally execute the contract, a contracting party is entitled to any legal remedy in order to seek compensation.

##### **Bankruptcy**

The "*administrator*" appointed by the Court is obliged to proceed with the completion of any contract which has not been performed (i.e. the transaction is completed but the property has not been transferred yet).

The discretion of the "*administrator*" lies in the fundamental principles of Articles 200, 281, 288 of the Greek Civil Code.

## 5 Claims

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#### 5.1 Broadly, how do creditors claim amounts owed to them in each procedure?

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Following the liquidation of the company's assets the "*administrator*" distributes the dividends to satisfy the creditor's claims. According to Articles 975-979, and 1007 of the Greek Civil Code and following the notification of the creditors, the "*administrator*" classifies creditors accordingly. (See answer to question 5.2.).

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#### 5.2 What is the ranking of claims in each procedure? In particular, do any specific types of claim have preferential status?

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Regarding the classification of the creditor's claims during the procedure of "*special liquidation*" as well as in the bankruptcy procedure, Articles 975 and 1007 of the Greek Civil Code apply.

For the classification of creditors' claims, the legislator follows the "*privilege system*".

1. There are three (3) categories for the creditors:
  - a. General Privileged (Art. 975 of Greek Civil Code).
  - b. Special Privileged (Art. 975 of Greek Civil Code).
  - c. Simple Creditors with no privilege.
2. There are classifications in every privilege. In case where there are many creditors in the same class, they will be classed in

proportion to their claim.

3. In the case where general privileged, special and unsecured creditors co-exist, the table is drafted in the following manner:

- a. The legal costs are deducted.
- b. The claims of contracts of dependent work are covered.
- c. The distribution of the dividends is partially performed (one third of the total sum is used for general privileged creditors and the remaining two thirds is used to satisfy the specially privileged (1st and 2nd class). From the remaining amount, the 3rd class is satisfied.

4. The simple creditors are satisfied respectively from the remaining amount (Art. 978 Greek Civil Code).

All the creditors regardless of their privilege are classified either with conditional claims or with unconditional claim (mortgage etc.). The creditors who will have to prove their claims will not receive compensation until the claim is proven.

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#### 5.3 Are tax liabilities incurred during each procedure?

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In each procedure tax debts are paid and no classification applies, (as in question 5.2) provided that the said debts are overdue.

## 6 Ending the Formal Procedure

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#### 6.1 Is there a process for "cramming down" creditors who do not approve proposals put forward in these procedures?

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##### **Bankruptcy**

Following the completion of the auditing of creditor's claims, the instructing judge assembles a "*bankrupt's creditors' meeting*", aiming to reach a "*bankrupt's settlement*".

The "*bankrupt's settlement*" is an agreement between the bankrupt company and the creditors with regards to a settlement of their claims. It requires Court ratification and is binding to all creditors even to those who voted against it.

Effects of the "*bankrupt's settlement*".

- a. The end of the bankruptcy period is declared.
- b. The over indebted company regains control of its assets.
- c. The assets prior to and after the bankruptcy period are merged.
- d. The group of creditors is diluted and the "*administrator's*" obligations cease to exist.
- e. The personal claims on behalf of the creditors are recovered.

##### **Company Restructuring**

Regarding the settlement of creditor's claims, the written consent of the majority of the shareholders is required. An arrangement and/or limitation of the claims against the company is made.

An "*arrangement*" is interpreted as the postponement of the due debt and/or other means of settlement.

A "*limitation*" is interpreted as the deduction of the debt.

For example:

- a. A settlement regarding the due interest.
- b. The satisfaction of the claim in different time than the one demanded by law.
- c. An award of company's shares.
- d. The increase of the company's share capital.

The ratification by the Court of Appeal of the company's seat

remains an essential requirement.

### **Special Liquidation**

The aforementioned agreement can be completed when the company is under "*special liquidation*" (Article 46 and 46a of Law 1892/1990). The same principles which govern the "company restructuring" apply here.

## **6.2 What happens at the end of each procedure?**

### **Special Liquidation**

The clearing of the company's assets, the collection of the price of the sale (either partial or in full) and the distribution of that to the creditors, lead to the completion of the "*special administrator's*" obligations and to the end of the "special liquidation" procedure (of Art. 46a of Law 1892/1990).

Following the completion of the "*special liquidation*" proceedings, the "*administrator*", is obliged (under Art. 303 of Greek Civil Law) to report to the representative authorities of the company, which successively take full control after the completion of the procedure. There is no judicial ratification at the end of this process.

Furthermore, the procedure can come to an end by the revocation of the Court of Appeals decision which declared the company under "*special liquidation*".

### **Bankruptcy**

Following the distribution and the satisfaction of the creditors (with the table of claims), the bankruptcy procedure is over. Upon completion of the restitution of the company, any obligations are discharged.

The company's restitution can take place with a Court's decision following a petition lodged by the bankrupt or any successors, when at least one of the following conditions is satisfied:

- Ten (10) years have passed from the declaration of bankruptcy.
- The conclusion and ratification of a "bankrupt's settlement".
- The entire satisfaction of the creditors' claims.

When the company's restitution takes place following the satisfaction of the creditors' claims, the decision issued by the Court, results to the termination of bankruptcy as well as the revocation of any personal consequences. (Article 18 para.2 of Law 635/1937)

### **Company Restructuring**

The termination of the administration custody results in:

- The completion/termination of the "*special administrator's*" obligations. This occurs after the completion of the

company's restructuring agreement (of Article 44 of Law 1892/1990) and its ratification by the contracting parties.

- The removal of suspensive measures which refer to execution proceedings against the company.
- Any bankruptcy procedure which was temporarily suspended due to the fact that the company was under special administration, is "*ipso jure*" revoked after the completion of the "*bankrupt's agreement*".

## **7 International**

### **7.1 What would be the approach in your jurisdiction to recognising a procedure started in another jurisdiction?**

According to the application of E.U. Regulation No. 1346/2000 regarding bankruptcy, Greece will recognise as fully binding the decision that was made in another EU Member State.

As a rule, the decision starting the insolvency procedure is recognised in all Member States when it starts to produce results in the State where it commenced. (Art. 16.)

The only exception to this recognition (debtor located in a Member State) is if the decision is contrary to the Greek public order. (Art. 17.)

Additionally, the appointment of the "*administrator*" and any powers granted by the Court of the Member State where the procedure started, are also fully binding in other Member States.



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Dimitris N. Economou joined Bahas, Gramatidis & Partners in 2006. He specialises in Commercial, European and Corporate Law. Mr. Economou was involved in a number of major bankruptcy cases in Greece where he used his expertise in corporate law litigation combined with his knowledge of bankruptcy law. A member of the Athens Bar Association since 2004, he received his law degree and his LL.M (International and Commercial Law) from the University of Buckingham (UK). Born in Greece, Mr. Economou is also fluent in English and has a working knowledge of French.

## **BAHAS, GRAMATIDIS & PARTNERS**

Bahas, Gramatidis & Partners traces its origins to the Law Office Marios Bahas in 1970. In 1988, the original firm merged with Law Office Y.Gramatidis to form Bahas, Gramatidis & Associates with the participation of Dimitris Emvalomenos in 1990. Finally, in 2002, Bahas, Gramatidis & Associates merged with Law Office Athanassios Felonis & Associates and with Law Office Spyros G. Alexandris & Associates, to form Bahas, Gramatidis & Partners.

The firm's corporate team advises companies and businesses on a daily basis and all aspects of carrying business in Greece from commercial regulatory matters to regulatory compliance. Mergers & Acquisitions transactions completed by its corporate team include acquisitions for Regal Petroleum plc, Berry Bros & Rudd, Allied Lyons plc and others. The firm advises on joint ventures (between Greek and non-Greek parties), takeover bids and private equity investments. Further it has a very broad general corporate practice including company formation and follow-up, holding arrangements, participations, etc. Finally, the firm has contacted an impressive number of legal due diligences mainly in relation to companies applied for listing in the Athens Stock Exchange, and in restructuring and acquisition cases. In litigation, the firm is highly ranked by various reputable legal directories.