



Restructuring and Insolvency

in 57 jurisdictions worldwide

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1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

The primary legal act regulating bankruptcies and reorganisations of commercial companies is the Law on Commerce. Certain businesses, however, have their own specific legislation on the matter: bankruptcies and reorganisations of banks are regulated by the Law on Bank Insolvency; insurers – by the Insurance Code; and pension funds and pension fund managing companies – by the Social Security Code.

In addition to the main legislation above, certain provisions of other acts and regulations apply as well – the most important provisions among them are provisions of: the new Code on Civil Procedure, the Law on Registered Pledges, the Tax and Social Security Procedure Code, and the Law on Guaranteeing Employee Receivables in the case of Employer's Insolvency.

2 Excluded entities

What entities are excluded from bankruptcy proceedings and what legislation applies to them?

There is a limited number of entities that have public enterprise status (ie, special purpose legal entities that are not companies or corporations and that are fully owned by the Bulgarian state), and that are either granted a state monopoly privilege or are established by a special bill of law, which are excluded from bankruptcy proceedings altogether.

(Please refer to question 1 for special regimes of bankruptcy.)

3 Secured lending and credit (immovables)

What are the principal types of security devices that are taken on immovable (real) property?

Bulgarian law recognises two instruments for taking security interest in land, buildings and other real estate: mortgages and going concern pledges (to the extent the going concern of the debtor includes immovables). Both instruments provide substantially the same security rights and priority.

The mortgage is created by execution of a notary deed before a notary and is perfected by registration of the mortgage with the land registry. The main disadvantage of the mortgage compared to the going concern pledge is the cost for its creation, which amounts to 0.1 per cent of the secured principal. The mortgages are enforced in a court-administered procedure.

The going concern pledge is more cost-effective and allows the creditor to take security interest in the dynamic pool of all assets, obligations, and factual relationships of a company. Because only upon commencement of foreclosure does the security crystallise and attach as a specific charge to all assets forming part of the floating pool at the time of enforcement, the going concern pledge usually also includes a reference to an individually specified asset – the real

property, for instance – creating a special charge over the real estate asset, which would follow the asset even after it leaves the pool. The pledge is created by written agreement with notarised signatures of the parties and is subject to registration with the commercial registry, as well as with the land registry (for real estate assets). The secured creditor is entitled to out-of-court foreclosure, that is, to sell on its own the pledged assets in a commercially reasonable manner.

The scope of both going concern pledge and mortgage could be full title rights or limited in rem rights (such as superficies). All objects that are permanently attached to the ground are also part of the real estate and thus will be covered by the mortgage or the going concern pledge.

4 Secured lending and credit (moveables)

What are the principal types of security devices that are taken on moveable (personal) property?

Bulgarian law recognises both possessory and non-possessory (registered) pledges over moveables. The possessory pledge over moveables creates security interest only in specific moveables and it is based on physical possession of the asset by the secured creditor.

A non-possessory (registered) pledge allows the establishment of a security over specific moveables without possession by the creditor. It can also take the form of a security over the floating pool of moveables (or the entire going concern, including moveables and immovables) owned by the debtor at the time of enforcement (please see question 3).

5 Unsecured credit

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, regardless of whether they are foreign or local, could obtain satisfaction from the properties of their debtor. Nevertheless, if certain property is subject to the rights of a secured creditor, the unsecured creditor could obtain satisfaction from the property only after satisfaction of the secured creditor. Furthermore, unsecured creditors generally obtain satisfaction only within court-administered procedures, which is more often than not slow and costly.

Where the enforcement of the rights of a creditor could be materially impeded or rendered impossible, the creditor could request the securing of its future or pending court claim. The court would allow the securing of the claim by pre-judgment attachments provided that the claim is supported by convincing written evidence, or the creditor provides a guarantee to the amount of the direct damages which could be suffered by the debtor if the securing of the claim is subsequently declared unjustified. Securing by pre-judgment attachments does not constitute a ranking privilege for the creditor.

After a court judgement or arbitral award is rendered in favour of the creditor, the latter would obtain a writ of execution, on the grounds of which a public or private bailiff would commence the foreclosure.

If the receivables arise pursuant to an agreement with notary certification of the signatures, the creditor could obtain directly a writ of execution, without the need to litigate on the merits.

6 Courts

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

An exclusive jurisdiction over bankruptcy proceedings is vested in the court competent for the region where the debtor's seat is located at the time of the bankruptcy filing. Most of the bankruptcy court's decisions are subject to appeal before the regional Court of Appeals and certain of the appellate decisions can be appealed before the Supreme Court of Cassation.

7 Voluntary liquidations

What are the requirements for a debtor to commence a voluntary liquidation of its business? What are the effects of the commencement of the liquidation?

A company is required to commence voluntary liquidation (outside of the bankruptcy context) in the following cases:

- expiration of the term of incorporation (if the company was incorporated for a definite period of time);
- resolution of the shareholders (adopted by a majority of at least 75 per cent of the votes); or
- other grounds for liquidation provided for in the articles of association.

The effects of the commencement of the liquidation are: the termination of the ordinary course of business of the company; finalisation of any ongoing transaction; collection of receivables; and conversion of the properties into cash. The liquidation results in satisfaction of the company's creditors followed by distribution of any remaining assets to the shareholders. If the assets of the debtor are insufficient to satisfy the creditors, that would mean that the debtor is over-indebted and the liquidation would be replaced with bankruptcy proceedings.

8 Involuntary liquidations

What are the requirements for creditors to place a debtor in involuntary liquidation? What are the effects of the commencement of the liquidation?

In the context of liquidation, as it is understood under Bulgarian law (ie, outside of the context of bankruptcy), creditors cannot place a debtor company in liquidation because involuntary liquidation is ordered by the court on various grounds of illegality (or upon justified request from a minority of shareholders) and not on grounds of unsatisfied debts, for which the remedy is bankruptcy. Thus, instead, creditors can request from the court to place a debtor in involuntary bankruptcy, in case the debtor is unable to meet its payment obligations (please refer to question 11).

For the effects of the commencement of liquidation, please refer to question 7.

9 Voluntary reorganisations

What are the requirements for a debtor to commence a financial reorganisation? What are the effects of the commencement of the reorganisation?

Under Bulgarian law, financial reorganisation as a legal process – whether voluntary or not – is relevant only in the context of bankruptcy proceedings, in which there is an option for the creditors to approve a reorganisation plan, under which the debtor will continue its business and the bankruptcy proceedings will be terminated. Outside of bankruptcy, financial reorganisation in Bulgaria is not subject to any specific legal procedures or requirements and is only a business matter.

10 Involuntary reorganisations

What are the requirements for creditors to commence an involuntary reorganisation? What are the effects of the commencement of the reorganisation?

Generally, any creditor with claims that have remained unpaid and overdue for a certain period of time can file for the commencement of bankruptcy proceedings against the debtor. Proceedings would be actually started if the court establishes that the debtor is insolvent or overindebted.

The application for commencement of bankruptcy proceedings may be filed with the court by the debtor (which is obliged to do so if insolvent or overindebted), the liquidator (if the debtor is in liquidation), any creditor, or the State Receivables Collection Agency (if the debtor has financial obligations to the state or municipal authorities).

11 Mandatory commencement of insolvency proceedings

Are companies required to commence insolvency proceedings in particular circumstances (to avoid personal liability to directors and officers or otherwise)? In what circumstances must companies do so? If proceedings are not commenced, what liabilities can result?

A company is required to file for bankruptcy if it is insolvent (ie, actually unable to meet its current payment obligations or simply suspending payments for a certain period of time) or overindebted (ie, the company's debts exceed its assets). The insolvency should be presumed upon suspension of payments for 30 days.

If the company finds itself insolvent or overindebted (or suspends its payments for a certain period of time), and, in spite of that, it does not file for bankruptcy within the statutory periods, the company's directors would be jointly liable before the creditors for the delayed payments. In addition to that, the debtor's directors incur criminal liability for failing to notify the court of the insolvency, overindebtedness or suspension of payments; the penalties include imprisonment for up to three years, fines, or both (see also question 34).

12 Doing business in reorganisations

Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use of assets and 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?

A debtor operating under an approved reorganisation plan must carry out its activities in accordance with the reorganisation plan. The plan may provide for the establishment of a supervisory body (presumably composed by creditors but there are no specific requirements for that), which will supervise the activities of the debtor, approve major transactions (transactions with debtor's assets outside of the ordinary course of business), etc.

In principle, the bankruptcy court does not have a role in supervising the activities of a debtor operating under a reorganisation plan (the bankruptcy proceedings are terminated with the final approval of the plan by the court.) However, upon request made by a creditor, the debtor, or the supervisory body (if such has been established), the bankruptcy court may – when approving the plan or at a later stage (after termination of the bankruptcy proceedings) – specify the assets that could be disposed of by the debtor only with the prior approval of the court or of the supervisory body (if any). Likewise, the court could replace members of the supervisory body with other persons.

13 Rejection and disclaimer of contracts in reorganisations

Can a debtor in 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?

A debtor operating under a reorganisation plan is not allowed to reject or disclaim any contract other than on grounds provided for in the respective contract itself.

Contracts can be disavowed in the course of bankruptcy proceedings but only by the bankruptcy trustee, who is empowered to terminate any contract, provided the contract has not been fulfilled wholly or in part. The party to a terminated contract could become a creditor in the bankruptcy.

14 Sale of assets

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?

The sale of the going concern by definition includes the acquisition of liabilities by the purchaser because 'going concern' is defined in the law as a pool of all assets and liabilities of a company (even though, but only to a limited extent, assets and liabilities could be carved out of the going concern pool for purposes of the sale).

In the case of a debtor operating under a reorganisation plan, the assets or the going concern are sold in accordance with the provisions of the plan (and the contract for the sale of the going concern enclosed with the plan). The sale could be subject to approval by the court or the supervisory body established under the plan (see question 12). If the plan provides for the sale of the whole or part of the going concern of the debtor, any disposal of assets (sold as part of the going concern) by the purchaser prior to full payment of the purchase price would be null and void vis-à-vis the creditors. If the assets (or the going concern) are subject to liens, they will pass free and clear of those liens only to the extent that the secured creditors are satisfied in accordance with the reorganisation plan.

In the course of bankruptcy, if no reorganisation plan is adopted, the debtor's assets (the debtor's going concern cannot be sold other than under a reorganisation plan) are sold by the bankruptcy trustees at a closed-envelope auction starting from the assets' valuation approved by the creditors. If the auction fails, a second auction would be held, starting at 80 per cent of the initial valuation, and if this fails too, the assets would be sold through direct negotiations. The assets sold under this procedure pass to the purchasers free and clear of any liens or claims.

15 Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by secured and unsecured creditors are imposed by legislation or court order in liquidations and reorganisations? In what circumstances may secured or unsecured creditors obtain relief from such prohibitions?

Upon commencement of bankruptcy proceedings, the general rule is that all court or arbitral proceedings of civil or commercial nature or enforcement proceedings against the debtor are suspended. The main exceptions from that rule are labour disputes over remuneration; the enforcement of claims for public liabilities started prior to the commencement of the bankruptcy proceedings; and the enforcement of registered pledges over moveables. There is a conflicting jurisprudence as to whether enforcement of registered pledges could be stopped by the court after opening of the bankruptcy proceedings.

After the bankruptcy proceedings are started, the commencement of new court or arbitration proceedings against the debtor is inadmissible, except for labour disputes and for claims for protection of the interests of third-party owners of moveables placed in the bankruptcy estate. Also, no injunction orders can be imposed after commencement of the bankruptcy proceedings.

16 Arbitration processes in bankruptcy

How frequently are arbitration procedures used in insolvency proceedings? What limitations are there on the availability of arbitration procedures in insolvency cases? In insolvency proceedings, will the court allow arbitration proceedings to continue after an insolvency case is opened?

The declaration of the bankruptcy proceedings stays all arbitration proceedings concerning the rights and obligations relating to the bankruptcy estate and no new arbitration proceedings can be started against the debtor (please see question 15). The prevailing opinion is that the debtor should not be allowed to initiate arbitration.

17 Set-off and netting

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?

In bankruptcy proceedings, a creditor would be entitled to full set-off provided that all general conditions for set-off have arisen before the commencement of the bankruptcy proceedings, unless the creditor knew of the impending commencement of bankruptcy, in which case the set-off could be declared null and void. In addition, if the creditor's claim becomes due during bankruptcy or the ruling opening the bankruptcy results in that claim becoming due and of the same kind with the debtor's claim, set-off would be allowed after commencement of the bankruptcy. Notwithstanding the foregoing, a set-off by the debtor after the date of actual insolvency or overindebtedness (determined by the court) would be null and void vis-à-vis the creditors, except for the portion that would be received by the concerned creditor from the proceeds from the sale of assets in the course of bankruptcy.

On the basis of special bankruptcy rules, the creditors secured pursuant to financial collateral agreements could fully exercise their rights of netting in liquidation or reorganisation, without subject to limitation.

18 Intellectual property assets in insolvencies

May the licensor or owner of the IP 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 an IP licensor or owner to continue to use the IP for the benefit of the estate?

There are no specific provisions regarding the continuation or termination of IP agreements in case of bankruptcy.

19 Post-filing credit

Does your country's insolvency system allow a debtor in a liquidation or reorganisation to obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

A debtor in bankruptcy is allowed to obtain unsecured post-filing loans. Such loans as well as any other receivables arising after commencement of the bankruptcy proceedings have to be repaid at maturity, which makes them the only claims subject to payment during the bankruptcy process. If there are no funds available for repayment at maturity, the respective creditor is to be satisfied from the proceeds from the sale of assets (or under a reorganisation plan) whereas its claims would rank before the 'general' unsecured claims. An argument could be made that the law does not prevent the bankruptcy trustees to give security for a post-filing loan, but it seems that in practice that would be rejected by trustees and judges in general because of the principle of equal treatment of creditors.

20 Successful reorganisations

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 create releases in favour of third parties, and, if so, in what circumstances?

The reorganisation plan may provide for deferment or rescheduling of payments, reduction or conversion of debts into capital, sale of the whole or part of the going concern, sale of assets, etc.

However, special restrictions apply in terms of restructuring and rescheduling public claims (eg, tax liabilities owed by the debtor to the government) and the bankruptcy court may not refer the plan for consideration by the creditors if these restrictions have not been complied with.

The reorganisation plan must specify the following:

- the ratio of claims to be satisfied and the manner and timeline for satisfying such claims;
- for each class of creditors, a comparison between the ratio of claims to be satisfied and the satisfaction ratio that would have been obtained under distribution of proceeds from sale of assets;
- the guarantees given to each class of creditors in relation to the performance of the reorganisation plan;
- the organisational, financial, legal, technical and other actions to be undertaken for purposes of implementing the plan;
- a draft of sale contract signed by the purchaser if the plan provides for sale of the going concern of the debtor;
- the appointment of a supervisory body (optional); and
- the effects of the plan on the debtor's employees.

A plan can be proposed by:

- the debtor;
- the bankruptcy trustee;
- creditors holding one-third of secured claims or of unsecured claims;
- shareholders of the debtor holding one-third of the capital or an

- unlimited liability shareholder; and
- 20 per cent of the debtor's employees.

The reorganisation plan has to be accepted by the bankruptcy court before being submitted to the creditors' vote, after which it is subject to final approval by the court. The plan has to be approved by simple majority of the claims in each separate class of creditors, as follows:

- secured claims;
- employment relationships claims;
- public liabilities claims (tax liabilities and the like);
- unsecured claims; and
- claims arising out of:
 - interest on unsecured loans accruing after the opening of the bankruptcy proceedings;
 - shareholder loans;
 - gratuitous transactions; and
 - expenses relating to a creditor's participation in the bankruptcy proceedings.

Guarantors, or third parties that have created a pledge or mortgage to secure obligations of the debtor, or persons or entities that are jointly liable with the debtor, may not benefit from the releases provided for in the reorganisation plan.

21 Expedited reorganisations

Do procedures exist for expedited reorganisations?

There is no pre-packaged insolvency in Bulgaria.

The only way to expedite the bankruptcy proceedings to a certain extent would be for the court to decide that the continuation of the debtor's activity would prejudice the bankruptcy estate. In this case, the court may decide to immediately declare the debtor bankrupt, which means that the debtor's activity would have to be ceased. Thus, the reorganisation plan option would be bypassed, saving a few months of proceedings.

22 Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of the plan not being approved? What happens if there is default by the debtor in performing an approved plan?

In the event no reorganisation plan is approved by the creditors' meeting (see question 20) or confirmed by the court, the court will declare the debtor bankrupt, the debtor will cease all activity, and the proceedings will continue with sale of the debtor's assets and distribution of proceeds for satisfaction of the creditors.

If the debtor fails to comply with the plan, any creditors with claims reorganised under the plan and representing at least 15 per cent of the total amount of the claims under the bankruptcy, or the supervisory body (if any), could request from the court to re-open the bankruptcy proceedings without the need to prove insolvency or overindebtedness. In that case, the proceedings would go directly to sale of assets, bypassing the reorganisation option. Resuming the proceedings does not affect the restructuring or rescheduling effect of the plan on the claims.

23 Bankruptcy processes

During a bankruptcy case, what notices are given to creditors? What meetings are held? What committees are or can be formed? What powers or responsibilities do these committees have? May creditors initiate proceedings to pursue remedies against third parties?

In general, the notices to creditors (mostly invitations for creditors' meetings, court decisions concerning the bankruptcy process, list of

admitted claims) are published in the commercial register held by the Registration Agency. Invitations for creditors meetings are published at least seven days prior to the date of the meeting. Notices regarding individual disputes on claims should be sent to the address specified by the respective creditor.

Generally, there are two types of creditors' meetings – a 'first meeting' held prior to the finalisation of the list of admitted claims, and one or more 'second meetings' held after the final list of admitted claims has been approved by the court and published in the commercial register.

Any creditors with claims listed in the initial list of claims prepared by the temporary bankruptcy trustee (appointed by the court) based on the debtor's books can participate in the first meeting of creditors. The most important role of the first meeting is to elect one or more permanent bankruptcy trustees. The first meeting can also elect a creditors' committee (optional), whose role would be mostly to supervise generally the activity of the debtor, give opinions, and assist and control the permanent bankruptcy trustees in their activity, without any real decision-making power.

The second meeting of creditors comprises only creditors whose claims have been admitted on the final list of claims, as approved by the court after any potential challenge. A 'second' meeting can be called by the court at the request of the debtor, the bankruptcy trustee, the creditors committee (if any), or by creditors holding one-fifth of the amount of the admitted claims. There is no minimum quorum for the meeting to be valid. Resolutions at all meetings (including the first meeting) are adopted by simple majority of the claims represented at the meeting. The most important powers of the second meeting of creditors are to vote on a reorganisation plan or, if no plan is presented or approved by the court, to determine how the auction of the debtor's assets will be conducted and approve the valuation of the assets for purposes of the auction.

In general, remedies against third parties on behalf of the debtor can be pursued only by the bankruptcy trustees.

24 Insolvency of corporate groups

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 combined into one pool for distribution purposes?

Bulgarian law does not provide for combined bankruptcy proceedings of members of a corporate group.

25 Modifying creditors' rights

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

The court may change the ranking of creditors' claims on the basis of a challenge filed by the debtor or a creditor in respect of admitted or non-admitted claims within seven days from publication of the list of claims in the commercial register. There are no statistics as to how frequently this occurs.

26 Enforcement of estate's rights

If the insolvency administrator is without assets to pursue a claim that is available to the estate, are there procedures by which the creditors can pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

Where the bankruptcy estate is not sufficient to cover the initial costs of proceedings, the court will determine an amount (and a term for prepayment) of the necessary costs of the proceedings to be prepaid by the creditor that filed the initial petition for bankruptcy. The pre-

paid costs of proceedings will be reimbursed to the respective creditor from the bankruptcy estate (once it has the necessary funds) but other than that, the fruits of the remedy should belong to the estate. Otherwise, the creditors cannot pursue remedies on behalf of the estate.

27 Claims and appeals

How is a creditor's claim submitted and what are the applicable time limits? How are claims disallowed and how does a creditor appeal a disallowance? Are there any provisions that deal with the purchase, sale or transfer of claims against the debtor?

The creditors have to file their claims with the court within one month of publication of the court decision opening the proceedings. The claims are filed in writing with all supporting documentation. The list of claims can be challenged as to the amounts and ranking of the admitted claims by any creditor within seven days from publication of the list in the commercial register.

If a creditor's claim is rejected, the creditor can appeal and while the appeal is pending, the proceedings will continue but a reserve amount (from the proceeds from the sale of assets or in the reorganisation plan) will be set up for purposes of satisfying the claim if the appeal is ultimately successful.

Claims are freely transferrable during bankruptcy.

28 Priority claims

What are the major governmental and non-governmental privileged and priority claims in liquidations and reorganisations? Which priority and privileged claims have priority over secured creditors?

There are no claims that precede in rank the secured claims. The major priority classes are as follows:

- secured claims (mortgages, pledges);
- employment-related claims;
- public liabilities claims (tax, social security, and the like);
- claims that arose after the commencement of the bankruptcy, to the extent they have not been satisfied at maturity during bankruptcy;
- other unsecured claims; and
- claims under shareholder loans; etc.

29 Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive insolvency so that they are enforceable against the debtor after it has reorganised?

In principle, no liabilities of the debtor survive the final distribution of proceeds from the sale of the debtor's assets and the completion of the bankruptcy process (regardless of whether or not the debtor company is dissolved afterwards). However, if unknown assets of the debtor are discovered within one year from termination of the proceedings, these would be sold and the proceeds would be used for further satisfaction of the creditors (if there are unsatisfied claims).

30 Distributions

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

Distribution to the creditors for purposes of satisfaction of their claims is made out of the proceeds from the sale of the debtor's assets, in accordance with the creditors' priority ranking (see question 28). If the proceeds are insufficient to satisfy the creditors of a given class, the funds available to that class will be distributed within the class on a pro rata basis.

This is the last stage of the bankruptcy proceedings, if no reorganisation plan was adopted. If a plan was approved, any distribu-

tion would be made as per the plan (if, for instance, the plan provides for sale of certain assets or of the going concern of the debtor).

31 Transactions that may be annulled

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

The following transactions are null and void by operation of law vis-à-vis the creditors if they had been entered into by the debtor after the date of insolvency or overindebtedness (determined by the court): performance of a pecuniary obligation; any gratuitous transaction concerning assets of the debtor; any security established over assets of the debtor; and any disposal of debtor's assets at less than their market value.

In addition, the following transactions entered into by the debtor within a certain period of time prior to the date of commencement of the bankruptcy proceedings (the 'suspect period', which is two years in all but a few cases indicated below), could be declared by the court null and void vis-à-vis the creditors:

- any gratuitous transaction, except for an ordinary gift in favour of a related party (three-year 'suspect period');
- any gratuitous transaction in favour of a non-related third party (standard two-year 'suspect period');
- transactions where the value received is considerably less than the value of the asset transferred;
- performance of financial obligation by way of transfer of assets, which took place within three months prior to the date of actual insolvency (determined by the court), if the return of the assets would increase the distribution to the creditors;
- any security established in relation to an unsecured claim (one-year 'suspect period'), as well as any security established in relation to an unsecured claim of a debtor's shareholder (two-year 'suspect period');
- any transaction with a party related to the debtor prejudicing the creditors.

Furthermore, the following transactions executed after the commencement of the bankruptcy proceedings in violation of the bankruptcy procedure are null and void vis-à-vis the creditors: performance of an obligation which pre-dates the commencement of the proceedings; establishment of a pledge or mortgage over an asset from the bankruptcy estate; and any transaction with an asset from the bankruptcy estate. There could be an argument a contrario that, for instance, creating a security over an asset from the estate in favour of a third-party lender should be valid if approved by the trustee and the court, but in practice most trustees and judges would not agree to that, out of fear that the creditors would vehemently object based on the general principle of equal treatment of creditors in bankruptcy. This poses a real problem if the debtor's business needs substantial financing during bankruptcy because it is unlikely to find a creditor willing to give financing without real security (for post-filing credit, please see question 19).

The parties to the transactions that are null and void, annulled by the court, or terminated by the trustee (see question 13) would become unsecured creditors of the debtor if they are owed monies or if the assets they have to return do not belong to the debtor. Otherwise, upon annulment of a transaction, the other party must return whatever asset it had received from the debtor.

32 Proceedings to annul transactions

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

There are two periods prior to the commencement of the bankruptcy proceedings that are important for purposes of annulment of transactions: the 'suspect period', which is provided for in the law (please refer to question 31), and the period from the date of actual insolvency or overindebtedness (determined by the court) until the date of commencement of the proceedings. Since there is no statutory limitation as to how far back in time could the date of actual insolvency be (it depends on the court), the second period could be actually longer than the 'suspect period'.

A claim for invalidation of a transaction might be filed by the bankruptcy trustee or, in the event of his or her inactivity, by any creditor of the bankruptcy estate, always within one year from the opening of the bankruptcy proceedings. The rules of annulment of transactions apply whenever bankruptcy proceedings are opened regardless of whether or not these terminate with the adoption of a reorganisation plan.

33 Directors and officers

Are corporate officers and directors liable for or can they be made to pay obligations owed by their corporations?

Corporate officers and directors are not liable for and cannot be made to pay obligations owed by their corporations.

34 Duties of directors to creditors prior to bankruptcy

Do corporate directors and officers have any liability for pre-bankruptcy actions by their companies? Can they be made subject to sanctions or penalties for other reasons?

Regarding pre-bankruptcy actions, the corporate directors may be held criminally liable if:

- their company has conducted its operations not in accordance with the standard of care required from the good merchant or has entered into manifestly risky transactions out of its ordinary course of business;
- their company has made expenses that are manifestly unrelated to its business and with disregard for its financial situation; or
- their company has failed to prepare such financial statements as may be required from it or has produced inaccurate financial statements.

The above is true provided, however, that in each case a declaration in bankruptcy coupled with damages for the creditors has resulted from such actions or omissions.

With respect to criminal liability for failure to file for bankruptcy, please refer to question 11.

35 Creditors' enforcement

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?

Generally, the only way to seize assets of a debtor outside of court-administered proceedings is by enforcement of a registered pledge, whereas the assets seized could be only those subject to the pledge. (Please refer to questions 3 to 5 for details on the enforcement of

secured and unsecured claims). In all other cases, the creditor needs to go through the court (although a simple writ of execution does not include litigation).

36 Corporate procedures

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

Dissolution and the ensuing liquidation of a company apply only to solvent companies that are able to satisfy their creditors. Also, liquidation is not fully administered by the court (but in certain cases liquidation can be imposed by the court) and the whole procedure is faster and simpler. Indeed, liquidation usually takes between eight months and one year, whereas bankruptcy normally takes several years.

For details on the procedures for dissolution and liquidation, please refer to question 7.

37 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

The bankruptcy proceedings are formally concluded by a court decision rendered either after all available assets of the debtor have been sold and the creditors have been satisfied to the extent of available funds (followed by dissolution of the debtor company if no assets remain after distribution to the creditors); or with the final approval by the court of a reorganisation plan.

38 UNCITRAL Model Law

Is the adoption of the UNCITRAL Model Law on Cross-Border Insolvency under consideration in your country? If so, what is the present status of this consideration?

Adoption of the UNCITRAL Model Law on Cross-Border Insolvency is not currently under consideration in Bulgaria.

39 International cases

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?

Following Bulgaria's accession to the European Union as of 1 January 2007, cross-border insolvencies involving other EU member states

are governed by Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings. To our knowledge, the regulation has not been yet tested in Bulgarian practice. Otherwise, Bulgarian bankruptcy law does not contain any provisions dealing with insolvency proceedings in another country.

There is no difference in treatment of foreign and domestic creditors, whether for purposes of bankruptcy or in general.

Bulgaria is signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The recognition and enforcement of foreign judgments is subject to the following conditions:

- jurisdiction of the foreign court over the case in accordance with the jurisdiction rules of Bulgarian law (except when the only ground for jurisdiction over property claims has been the citizenship or seat of registration of the plaintiff);
- the parties were duly served and no fundamental principles of Bulgarian law have been violated;
- there is no prior final and binding decision by a Bulgarian court on the same matter; and
- there are no pending proceedings before Bulgarian courts on the same grounds in respect of the same matter, in respect of which a decision has been issued.

40 Cross-border insolvency protocols and joint court hearings

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?

To our knowledge, Bulgarian courts have never experienced any form of cross-border insolvency.

41 Pending legislation

Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

Currently, there is no new or pending legislation affecting bankruptcy proceedings.

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Bulgaria	Applicable bankruptcy law, reorganisations: liquidations
	<ul style="list-style-type: none"> • Law on Commerce – the common regime of liquidation, reorganisation, and bankruptcy; • Law on Bank Insolvency – bankruptcy of banks; • Insurance Code – bankruptcy of insurers; and • Social Security Code – bankruptcy of pension funds and pension fund managing companies.
	Customary kinds of security devices on immoveables
	Mortgages.
	Customary kinds of security devices on moveables
	Registered (non-possessory) pledges.
	Stays of proceedings in reorganisations/liquidations
	Litigation and enforcement proceedings are suspended with the commencement of the bankruptcy proceedings (with certain exceptions, such as enforcement of public liabilities claims, registered pledges, etc).
	Duties of the insolvency administrator
	To supervise and ultimately manage the activity of the debtor during bankruptcy, report to the court and the creditors, sell the assets for purposes of satisfaction of the creditors, etc.
	Set-off and post-filing credit
	<ul style="list-style-type: none"> • Set-off is possible under certain conditions (mostly in cases where the legal conditions for set-off existed prior to the commencement of the bankruptcy proceedings); • Post-filing credit is to be repaid at maturity, otherwise it ranks after secured creditors, employees, and public liabilities, but before general unsecured claims. No security or super-priority could be provided for post-filing credit.
	Filing claims and appeals
	<ul style="list-style-type: none"> • Creditors' claims must be filed with the court within one month from the date of registration of the court decision opening the bankruptcy proceedings with the commercial register; • Any creditor can file an appeal against the final list of claims as to the amounts and rankings of the claims; • If a claim has not been admitted for purposes of the bankruptcy, the creditor can file an appeal and a reserve amount from the proceeds from the eventual sale of assets (or in the reorganisation plan) would be set up for satisfaction of the claim in case the appeal is successful.

Bulgaria continued	Requirements for approval of reorganisations
	A reorganisation plan has to be approved by: <ul style="list-style-type: none"> • a simple majority of the claims in each class of creditors; and • the bankruptcy court (for compliance with statutory requirements).
	Liabilities of directors and officers
	<ul style="list-style-type: none"> • No personal liability for company's debts; • Criminal liability for failing to file for bankruptcy when company is insolvent or overindebted, as well as for pre-bankruptcy actions not in accordance with standard duty of care, resulting in bankruptcy for the debtor and prejudice to the creditors.
	Pending legislation
None.	



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