

I. Introduction

The summer of 2007 brought about many important changes in Greek Commercial law. Through a series of contributions to the international law office newsletter we will be presenting all those changes beginning with the new Greek legal framework on bankruptcy law.

II. Brief presentation of the New Bankruptcy Law

The New Bankruptcy Law, (Law 3588/2007):

- a) abolishes the bankruptcy legislation of articles 525 to 707 of the Hellenic Commercial Law and of Compulsory Law 635/1937, as well as the restructuring proceedings of articles 44-46c of Law 1892/1990,
- b) adopts a unified bankruptcy-liquidation and reorganisation system with the primary aim of satisfying creditors and
- c) provides for proceedings that may lead to the satisfaction of creditors, without the gradual, and, as a result thereof, devalued sale of the bankruptcy estate.

The New Bankruptcy Law enables debtors to propose the reorganisation of their company, *prior to entering a state of cessation of payments*, and creditors to choose their satisfaction following an agreement, via the reorganisation plan.

The 'Bankruptcy Code' contains thirteen chapters.

Chapter 1 'Declaring bankruptcy' articles 1 to 14

1. Conditions and procedure:

- Commercial traders and unions of persons with a legal personality that pursue a financial scope have the capacity to declare bankruptcy. Legal entities of public law, public organisations and local government organisations do not have the capacity to declare bankruptcy;
- Cessation of payments constitutes an objective condition for the declaration of bankruptcy. The ‘impending incapacity to make regular payment’ declared by the debtor is also a sufficient condition for the declaration of bankruptcy;
- The multi-member court of first instance is the competent court;
- This chapter describes the proceedings relative to the submission of the bankruptcy application (at the latest within fifteen (15) days, provided the legal conditions concur);
- The ex officio declaration of bankruptcy by the courts is abolished, while the public prosecutor of the court of first instance has the right to request a debtor’s bankruptcy on the grounds of public interest;
- The bankruptcy declaration application is rejected if the legal conditions do not concur, if the debtor’s estate does not suffice to cover the expenses and if the application is exercised abusively;
- The distinction of receivers in bankruptcy between temporary receiver in bankruptcy, official receiver in bankruptcy and union receiver in bankruptcy is abolished.

Chapter 2 ‘Effects of bankruptcy’ articles 15 to 51

1. Effects of bankruptcy on the debtor:

- Personal sanctions and forfeitures that are incurred as result of a declaration of bankruptcy on behalf of the natural entity-debtor are abolished;

- This chapter defines the bankruptcy estate. Specifically, assets that the debtor acquires following the declaration of bankruptcy are excluded from the bankruptcy estate;
- Divestiture, in other words the debtor's forfeiture to manage his estate, is defined;
- This chapter introduces the following: (a) the debtor's capacity, following his request, to manage the bankruptcy estate under certain conditions, and (b) the prohibition of the distribution of the company's assets. Finally, this chapter explicitly states the debtor's obligation to inform the receiver in bankruptcy and to collaborate therewith.

2. Effects of bankruptcy on the creditors:

- This chapter defines the meaning of bankruptcy creditor and determines the fate of the various claims, making a separate reference to secured creditors;
- Following the declaration of bankruptcy, any claim that is not secured with a special lien or right in rem ceases to produce legal or contractual interest;
- All individual prosecutory measures taken by creditors against the debtor for the satisfaction of their bankruptcy claims are suspended ipso jure, with the exception of the case of secured creditors for the pledged assets of their bankruptcy estate.

3. Bilateral agreements

- The receiver in bankruptcy has the right to carry out the pending agreements and to request the same from the other contracting party;
- The receiver in bankruptcy has the right to terminate employment contracts of an indefinite term, the validity of which is not contingent on the payment of the legal compensation.

4. Separation and bankruptcy claim

- This chapter also establishes the right of separation which can be exercised by any party invoking a right in rem or right in personam on an asset that does not belong to the debtor as well as the right of separation of any party who, prior to the declaration of bankruptcy, delivered goods to the debtor due to sale on consignment or in order to be sold on his behalf.
5. Revocation of the declaration of bankruptcy
- This chapter defines ‘suspect period’ as the period from the cessation of payments until the declaration of bankruptcy and defines the actions that are mandatorily revoked when these were carried out during the said period, distinguishing these from those actions that are not mandatorily revoked;
 - This chapter further defines the actions that are not revoked and includes special provisions for financial transactions and the payment of money instruments.

Chapter 3 ‘The bodies of the bankruptcy proceedings’ articles 52 to 88

The bankruptcy court, the rapporteur, the receiver in bankruptcy, the meeting of creditors and the creditors’ committee are defined as the bodies of the bankruptcy proceedings.

1. The rapporteur is an appointed judge of the court of first instance and oversees the task of the receiver in bankruptcy.
2. The receiver in bankruptcy informs creditors, via a written communication, of the decision on the bankruptcy and on the invitation for the preparation of a table of contingent creditors; within three (3) days of his appointment, the receiver in bankruptcy unseals and takes an inventory of the bankruptcy estate before a justice of the peace; the receiver in bankruptcy submits a report on the condition of the bankruptcy estate and a report to the meeting of the creditors on the debtor’s financial position and on the company’s state of viability. The receiver in bankruptcy is liable for any damage that he negligently causes to the bankruptcy estate in violation of his obligations.

3. The meeting of the creditors initially comprises all creditors. Following the completion of all verifications, creditors whose claims were accepted participate in the meeting. Within twenty (20) days of the completion of the verifications, the meeting decides if the company's commercial activities shall continue to be carried out by the receiver in bankruptcy or if the company must be sold in its entirety or if the company's assets must be liquidated separately.
4. The tripartite creditors' committee, which is a newly-established body, is elected by the meeting of the creditors. One member of the committee is elected by the creditors whose debts are secured by a charge over property, one member of the committee is elected by the preferential creditors and one member of the committee is elected by the unsecured creditors. The committee monitors the progress of the proceedings and assists the receiver in bankruptcy in his tasks.

Chapter 4 'Claim auditing' articles 89 to 95

1. 'Announcement':
 - This chapter redefines the relative proceedings as regards the invitation that is issued to creditors to announce their claims, as well as the deadlines and the type thereof;
 - The debtor delivers to the receiver in bankruptcy a list of his creditors and the receiver in bankruptcy calls the said creditors to announce their claims in writing to the secretary of bankruptcies within three (3) months of the publication of the ruling that declared the bankruptcy. The receiver in bankruptcy prepares a table of creditors, noting therein the amount of the relative claim and the privilege, provided such exists.
2. 'Verification':
 - Three (3) days following the lapse of the deadline set for the announcements, the creditors' claims are verified by the receiver in bankruptcy in the presence of the rapporteur. The said claims are verified by cross-examining the creditor's

documents with the debtor's books and documents, and a relative report is drafted;

- This chapter also regulates all matters relating to the dispute of claims and the raising of objections.

Chapter 5 'Special provisions that apply to legal entities' articles 96 to 98

- The bankruptcy leads to the dissolution of the legal entity, although its bodies continue to function;
- In the case of a general and limited partnership, the general partners thereof are also deemed to have declared bankruptcy;
- Administrators of capital companies assume the liability (beyond the criminal liability stipulated by article 176 below) of restoring the damages that the creditors have sustained in the case in which an application for bankruptcy is not submitted in due time and in the case in which, as result of fraud or gross negligence, they caused the bankruptcy. Third parties 'who urged a member or members of the Board of Directors not to submit the application in due time' also assume the same liability.

Chapter 6 'Conciliation proceedings' articles 99 to 106

- This chapter introduces the institution of conciliation proceedings as a measure for the company's recovery on a pre-bankruptcy level. Entities who have the capacity to declare bankruptcy may request from the court to initiate conciliation proceedings provided they submit proof of financial incapacity without the cessation of payments. The court, with a relative ruling, appoints a mediator whose aim is to conclude an agreement between the debtor and creditors. The conciliation agreement is ratified by the bankruptcy court and the results thereof, which also include the temporary suspension of enforcement measures against the debtor, are determined. The agreement only binds the creditors who sign it.

Chapter 7 'Reorganisation plan' articles 107 to 131

- This chapter describes the proceedings as regards the reorganisation plan for both the company's recovery and exploitation and the distribution of the bankruptcy estate. The plan is submitted by either the debtor or the receiver in bankruptcy, it is accepted by the creditors via a majority of votes, is ratified by the bankruptcy court and binds all creditors. The plan cannot propose a decrease in the value of the claims set out therein by an amount less than 20%.

Chapter 8 'Liquidation of the debtor's estate and the distribution thereof' articles 132 to

161

- This chapter contains proceedings as regards the liquidation of the assets of the debtor's estate and the distribution of the product thereof to the creditors by the receiver in bankruptcy. This chapter also stipulates tax relieves, as well as the restriction of the rights and fees of notaries public, attorneys at law and other employees and officers (equal to 30% of the legal amounts);
- It describes the proceedings that are followed as regards the sale of the company, the value of which has been assessed by the court at an amount greater than one million (1,000,000.00) Euros, through a public tender;
- It describes the sale of movables and immovables in the case in which all of the movables and goods of the debtor's estate have not been sold until the establishment of a union by the creditors;
- It determines the relationship of the bankruptcy code with the rules on enforcement of the Hellenic Code of Civil Procedure and notes special regulations regarding liens during enforcements proceedings;
- It regulates the preparation of the table of distribution and the objections against it, the general and special privileges, as well as the case of accumulation of privileges.

Chapter 9 'Simplified proceedings for bankruptcies involving inconsiderable amounts'

articles 162 to 163

- This chapter provides simplified proceedings as regards bankruptcies involving inconsiderable amounts (less than 100,000.00 Euros without the existence of immovables) during which a creditors' committee is not appointed and expedites the adjudication of disputes during the proceedings for the verification of claims of creditors.

Chapter 10 'Closure of bankruptcy proceedings' articles 164 to 167

- Bankruptcy proceedings are closed following (a) the ratification of the reorganisation plan, (b) the sale of all assets and (c) the cessation of activities either due to the absence of assets or due to the lapse of a period of ten (10) years from the establishment of the union of the creditors or a period of fifteen (15) years from the date the bankruptcy is declared;
- In all these cases., the receiver in bankruptcy reports to the creditors;
- This chapter also provides for proceedings under which the bankruptcy court declares the debtor remissible in the case in which the debtor is deemed to have acted in good faith. In this case, the debtor cannot be imprisoned (unless a special law provides otherwise).

Chapter 11 'Restoration of the debtor' articles 168 to 170

- The debtor is restored following the lapse of a period of ten (10) years from the date the bankruptcy was declared or if the debtor settles the claims of all creditors. The bankruptcy court is the competent court. Debtors who are found guilty of carrying out acts of insolvency are not restored;
- This chapter describes the effects of the debtor's restoration, the cessation of forfeiture of rights, the recovery of the legal entity, the closure of bankruptcy proceedings, as well as the debtor's exemption, following the court's ruling, from the remaining claims that were not satisfied.

Chapter 12 'Criminal provisions' articles 171 to 177

- Special provisions of criminal law are adopted for the offence of insolvency;
- Criminal liabilities against third parties, spouses and relatives (for natural entities), as well as against receivers in bankruptcy or administrators and other legal entities (for legal entities), are enacted;
- The favourable treatment of a creditor is punished.

Chapter 13 'Final and transitional provisions' articles 178 to 181

- The liability of the new owner is restricted when the bankruptcy estate is transferred in application of the provisions of the Bankruptcy Code;
- This Bankruptcy Code entered into force on 16 September 2007.