Bulgaria

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1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

The main body of law governing bankruptcies and reorganisations is Part IV of the **1991 Commerce Act**, in effect since August 9, 1994, as amended. It regulates generally the bankruptcy procedure applicable to all entities, unless special laws contain special provisions applicable to the bankruptcy of special types of entities. Such special bankruptcy provisions are established for banks, insurance companies and pension funds respectively in the **Banks Act**, the **Insurance Act** and the **Additional Voluntary Pension Insurance Act**.

2 Excluded entities

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

Bankruptcy proceedings can be started against any natural or legal person that is a merchant if he is insolvent or, if a company, over-indebted, and against any person which hides a commercial activity behind an insolvent debtor. The opening of bankruptcy proceedings against a company automatically opens bankruptcy proceedings against its general partners (partners with unlimited liability).

Insolvency proceeding cannot be commenced against:

- a public enterprise to which the state has granted the right to engage in a business declared a state monopoly or established by a special law. Bankruptcy proceedings applicable to those types of entities may be regulated by special laws;
- a stock exchange.

3 Secured lending and credit (immovables)

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

The security device over an immovable property is a mortgage. It entitles the creditor to satisfy its claim with a priority from the sale proceeds of the mortgaged estate. This priority is preserved within a bankruptcy procedure. Second, third, etc mortgages are possible over the same property and they have the respective priority. A mortgage may be created by a contract with the creditor or by virtue of the law (for example a mortgage is established *ex lege* in favour of the seller of a real estate in order to secure his claims under the sale agreement).

Although the law does not regulate fiduciary ownership, it does not prohibit to the debtor to transfer to the creditor the ownership over an immovable property as a security of the debtor's liability. In such case by a counter-letter the creditor would undertake to transfer the ownership back to the debtor if he discharges his obligation.

4 Secured lending and credit (movables)

What are the principal types of security devices that are taken over movable (personal) property?

The principal types of security devices on movable property are:

Regular (non-commercial) pledge
It can be established over any type of movable property (other than ships and aircraft) and over receivables. The pledge is created by delivery of the physical possession of the property to the creditor or a third party-custodian. A written contract is not required for the validity, but is highly recommendable to ensure evidence of the pledge and enforceability against third parties. This pledge gives the creditor a first priority over the sale proceeds of the pledged property, including within a bankruptcy procedure. The creditor is not entitled to sell the pledged property alone, but must resort to a special judicial procedure;

Commercial pledge
This can be established over any type of movable property (other than ships and aircraft), receivables and securities. It can be created only to secure obligations under a commercial transaction. Creation is by delivery of the possession of the property to the creditor or to a third party-custodian or by an endorsement if the pledge is over a registered security. An agreement in writing is not required for validity, but is highly recommendable as evidence. If the pledge agreement is in writing and has an authentic date (eg certified by a notary) and provides for such a possibility the creditor may sell the pledged property alone without judicial intervention.

Special (non-possessory) pledge
This can be established over non-physical securities, receivables, movables (other than ships and aircraft), shares in general or limited partnerships or limited liability companies, aggregates of receivables, machines and equipment, goods, materials or non-physical securities or ongoing business. Apart from merchants, pledgors may be certain categories of natural persons, such as farmers, craftsmen, free lancers, etc. A written form of the agreement is required for validity. In order to be enforceable against third parties the pledge must be entered into the Registry of Special Pledges. The special pledge entitles the creditor to sell the pledged assets alone outside a court procedure.

Retention right
A creditor who lawfully holds an asset of the debtor may refuse to give it back to the debtor until and unless the debtor discharges his liability to the creditor. The retention right may be regular and commercial. A regular retention right may be applied only with respect to claims connected with the retained asset (for example claims for damages caused by this asset). The commercial retention right may be applied for any claims under commercial transaction. The creditor is entitled to satisfy his claim from the sale proceeds of the asset with priority to unsecured

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creditors within bankruptcy proceedings or judicial execution.

Mortgage over ships and pledge over aircraft
Both are established by a written agreement (for ships it has to be notarised). In order to be enforceable against third parties the security must be entered into the Registry of Ships or the Registry of Civil Aircraft respectively. The ship or the aircraft remains in possession of the debtor.

Again, although fiduciary ownership is not expressly regulated by the law it is not prohibited to make such a fiduciary transfer of ownership as a security of the debtor's liability.

5 Unsecured credit

What remedies are available to unsecured creditors (eg seizures, attachments, judgments, etc)? Are the processes difficult or time-consuming? Do any special procedures apply to foreign creditors?

An unsecured creditor must first sue the debtor if he is in breach of his obligations. After obtaining a judgment he can initiate a judicial execution against the debtor's property. These processes are usually difficult and time consuming. The secured creditors who join the judicial execution will be satisfied with priority from the sale proceeds of the property in which they have a security interest.

An unsecured creditor who intends to lodge a claim with the court or has already done so, may require from the court the imposition of precautionary measures aimed at preserving certain assets of the debtor within his property, such as freezing of bank accounts, attachment over immovable or movable property and other measures the court deems appropriate. The court would impose the measure if otherwise the enforcement of an eventually successful judgement will be impossible or more difficult. For the imposition of the precautionary measure the creditor may be required to give a bond in an amount determined by the court to serve as a guarantee for any damages caused to the debtor by the measure's imposition.

Foreign creditors possessing a foreign judgment or a foreign arbitration award must apply to a Bulgarian court for recognition of the judgement or the award before it can be enforced in Bulgaria.

6 Courts

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

The district court at the seat of the debtor has a jurisdiction on bankruptcy proceedings against it. It resolves on petitions for opening of bankruptcy proceedings against the debtor and on all other matters concerning the bankruptcy process. The district court controls the bankruptcy trustee/s of the debtor and approves the most important decisions of the creditors' meeting. The decisions of the district court are subject to a two-instance revision before the appellate court and 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?

The debtor or its managers, if the debtor is a company, are obliged by law to request the opening of bankruptcy proceedings within 15 days following the date when he became insolvent (unable to discharge a due and payable commercial or public debt related to his business) or, if a company, over-indebted (assets insufficient to cover monetary obligations). The bankruptcy proceeding follows the same pattern whether commenced voluntarily by the debtor or involuntarily by a creditor.

A company may commence a voluntary winding-up proceedings without bankruptcy proceedings if the company is not insolvent or over-indebted (see Section 25).

With the opening of the bankruptcy proceedings the debtor continues its business under the control of one or more trustees appointed by the court. He may enter into new transactions only with the consent of the trustee/s and in compliance with any measures imposed by the court. If the debtor's actions endanger the creditors, the court may disallow him to manage and dispose of his property and vest such rights into the trustee/s.

The decision of the court to open bankruptcy proceedings must be published in the State Gazette. From the date of the opening of the bankruptcy proceedings no liabilities of the debtor can be discharged except as provided for in the bankruptcy law (obligations of the debtor arisen after the date of the opening of the bankruptcy proceedings are discharged at their maturity, so that the debtor can continue his business). From the date of the publication any obligations to the debtor must be performed to the trustee/s, not to the debtor. With the opening of the bankruptcy proceedings all judicial or arbitration disputes against the debtor are suspended until the claim in dispute is finally accepted or rejected in the bankruptcy proceedings. If the claim is rejected in the bankruptcy proceedings the judicial or arbitration proceedings will continue with the participation of the trustee/s.

With the commencement of bankruptcy proceedings all executory proceedings against the debtor's property are terminated, except executory proceedings for tax liabilities and foreclosure actions initiated by a secured creditor, if such creditor's interests would otherwise be harmed.

8 Involuntary liquidations

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

A creditor can initiate bankruptcy proceedings against the debtor by submitting a petition to the court. The petition must show evidences of the inability of the debtor to pay a commercial or public obligation as it falls due or of his overindebtedness. The court may refuse to open a bankruptcy procedure if the debtor's financial difficulties are temporary and he has sufficient assets to discharge its liabilities. The consequences of opening bankruptcy proceedings upon a petition by a creditor are the same as in a voluntarily bankruptcy.

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?

A reorganisation is only possible after the commencement of bankruptcy proceedings (whether voluntary or not). In both cases, the debtor can propose a rehabilitation plan. A plan can be proposed not later than one month from the date of the publication of the court's approval of the list of creditors with accepted claims. The plan is first reviewed by the court for com-

pliance with the legal requirements and after that voted by the creditors. To be adopted, the plan must be approved by the majority of the value of the accepted claims. The creditors vote separately by classes of claims. A class of creditors accepts the plan if a majority in value in that class vote in favour. After its approval by the creditors the plan must be finally ratified by the court, provided it meets the legal requirements. With the final ratification of the plan the bankruptcy proceedings are terminated. If the debtor fails to perform the plan the bankruptcy proceedings can be re-started. In a re-started bankruptcy procedure no reorganisation plan can be adopted.

10 Involuntary reorganisations

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

A reorganisation plan can be proposed by creditors holding at least 1/3 of the secured or 1/3 of the unsecured claims. A plan is approved under the same procedure regardless who has proposed it. A reorganisation plan may be proposed also by:

- the trustee/s;
- shareholders holding at least 1/3 of the debtor's stock;
- the debtor's general partners;
- 20 per cent of the debtor's employees.

11 Doing business in reorganisations

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

During the rehabilitation phase the debtor continues its business in compliance with the reorganisation plan and without supervision by trustee/s because with the ratification of the plan the trustee/s are dismissed. Creditors holding at least 15 per cent of the total value of the claims, as restructured by the reorganisation plan, are entitled to request from the court to resume the bankruptcy proceeding if the debtor fails to meet its obligations under the plan.

12 Stays of proceedings/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 (a) liquidations and (b) reorganisations?

As mentioned in question 7 above, with the opening of bankruptcy proceedings all pending litigations against the debtor are temporarily suspended. The claimants in the suspended litigations must register their claims with the bankruptcy court. The only exception is for litigations in which the debtor is a defendant, but has filed a counter-claim or made an objection for set-off. If the claim of a creditor under a suspended litigation is accepted in the bankruptcy proceedings the suspended litigation is finally terminated, otherwise it continues with the participation of the trustee/s on behalf the debtor.

13 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 to set off either temporarily or permanently?

After the opening of bankruptcy proceedings a creditor may set off his claim against the debtor, provided that both his liability to the debtor and the debtor's liability to him existed, were counter and for the similar type of delivery, prior to the opening of the bankruptcy proceedings. If the creditor's claim became due after the date of the opening of the bankruptcy proceedings or of a similar nature as a result of such opening, the creditor may declare the set-off only after that.

A set-off may be declared void with respect to the remaining creditors if the creditor acquired his receivable and assumed the debt to the debtor prior to the opening of the bankruptcy proceedings, but at that time he was in bad faith (ie he knew that the debtor was insolvent or over-indebted or that a bankruptcy petition was filed). A set-off made by the debtor may be declared void with respect to his creditors if made after the initial date of insolvency regardless of the time when the two counter-claims have arisen.

There are no restrictions in the law for a set-off in the reorganisation phase (when a reorganisation plan is implemented).

14 Post filing credit

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

There is no general prohibition for a debtor in bankruptcy proceedings to take loans. However, as for all transactions, the debtor would need the consent of the trustee/s to do that. A loan taken by the debtor after the commencement of the bankruptcy proceedings would be paid by the debtor as it falls due. If the loan is not repaid at maturity it will be satisfied in the bankruptcy proceedings after the secured and some other claims (see 19 below) but prior to unsecured claims arisen before the opening of the bankruptcy procedure.

During the reorganisation phase the debtor may take loans, unless there are restrictions in the reorganisation plan.

15 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?

The law contains very few restrictions on what may or may not be included in a reorganisation plan. By approving a plan, the parties may even agree to deviate from the statutory rules on the disposition of the debtor's assets and the distribution of proceeds. The plan must describe: (a) the organisational, legal, financial, technical and other measures for its implementation and (b) how it would affect the creditors' interests, including the extent, manner, term and guarantees for satisfaction of their claims and the employees. The reorganisation plan may provide for full or partial sale of the debtor's business, waiver of claims, rescheduling of payments, etc.

The procedure for the approval of a plan is described in 9 above.

16 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?

As stated in 9 above, a plan is first considered by the bankruptcy court. The court will reject the plan if is short of the minimum content requirement described in 15 above. If the court allows the plan for consideration by the creditors it will set up a date for a creditors' meeting to vote on the plan. Once the plan is approved by the creditors, the court must ratify it before it can be implemented. The court will refuse to ratify the plan if:

- it was not adopted in accordance with the legal requirements or approved by the creditors with the majority of the value of the accepted claims;
- the plan provides for partial payment to some classes of creditors and not even a single class of such creditors have voted in its favour;
- the plan provides for preferential treatment of some of the creditors in one class, unless the other creditors of the same class have consented to this;
- a creditor or debtor who disagree with the plan would receive less payment than he would have received in the absence of a plan;
- no creditor would receive more payment than his accepted claim;
- no income would be payable to a shareholder or partner of the debtor before the final payment to all creditors of any class prejudiced by the plan;
- any alimony payable to the debtor (if he is a natural person registered as a business) or to his family or general partners before the final payment to all creditors of any class prejudiced by the plan would exceed the amount fixed by the court.

If no reorganisation plan is approved and ratified by the court the debtor is declared bankrupt, his assets are liquidated and sale proceeds distributed to the creditors.

A failure by the debtor to implement the plan may result in resuming the bankruptcy proceedings if this is requested by creditors whose claims, as reorganised by the plan, exceed 15 per cent of the value of all claims. In such case no new reorganisation plan can be proposed in the resumed bankruptcy proceedings.

17 Bankruptcy process

During a bankruptcy case, what notices are given to creditors? What meetings are held? What committees are or can be formed? Can creditors initiate proceedings to pursue remedies against third parties or changes in the administration of the case?

The creditors of an insolvent debtor are not personally notified for the commencement of bankruptcy proceedings. A notice concerning that is published in the State Gazette, upon which all creditors are deemed notified. This may present a practical difficulty for a creditor who does not regularly peruse the State Gazette and in particular for foreign creditors, taking into account that creditors have only one month from the date of publication to register their claims with the bankruptcy court (otherwise they would forfeit their claims). Therefore, although not obliged by law, sometimes the trustee/s notify the creditors in person of the commencement of the bankruptcy proceedings. In addition, a notice about the commencement of the bankruptcy proceedings is placed in the company file of the debtor in the court where it is registered (normally this is the same court).

Once the bankruptcy proceedings have commenced, any act concerning them (whether of the debtor, the creditors, the creditors' committee or meeting or the trustee/s or the court) is recorded in a special book which is publicly available at the bankruptcy court's premises. The creditors are also personally notified regarding any decision or order of the court which concerns them and which is subject to appeal. Public notices about the most important stages of the procedure are also published in the State Gazette (eg regarding the preparation of the lists of accepted and disallowed claims, the creditors' meetings, etc).

The following meetings of the creditors are held:

- First creditors' meeting – at this meeting can participate all creditors who have been included in the provisional list of creditors prepared by the interim trustee/s on the basis of the debtor's commercial books. At this first meeting, the creditors mainly hear a report by the interim trustee/s and appoint permanent trustee/s and a creditors' committee (not mandatory).
- Second creditors' meeting – this is held immediately after the approval of the list of accepted claims. At this meeting can participate only creditors with accepted claims. The meeting hears the report of the trustee and the creditors' committee (if any), determines the trustee/s remuneration and the method of evaluation of the assets and the remuneration of the evaluators, and may appoint a creditors' committee (if this has not already been done) or change its membership.
- Meeting to vote on the reorganisation plan (if any).
- Final creditors' meeting to adopt the final distribution account as well as resolution concerning assets which cannot be sold.

A creditors' meeting may be convened at any time by the court if required by the debtor, or the trustee/s, or the creditors' committee, or creditors holding at least 1/5 of the value of the accepted claims.

A creditors' committee may be elected by the creditors' meeting to supervise and assist the trustee/s.

Upon the filing of a bankruptcy petition and before the court decides whether to commence bankruptcy proceedings, any creditor may ask the court to impose certain precautionary measures aimed at preserving the debtor's assets, such as order the suspension of any executory procedure against debtor's assets, impose attachment over all or some of his assets, etc. Any creditor may sue the debtor or its directors respectively for damages resulting from their failure to file a voluntary bankruptcy petition or the delay to do so. The creditors are entitled to ask the bankruptcy court to declare void certain transactions between the debtor and third parties (See 21).

Creditors can apply to the court for changes in the administration of the case. The court is obliged to dismiss a trustee upon application by creditors having 2/3 of the claims or upon a resolution of the creditors' meeting. The court may dismiss the trustee/s upon application of the creditors' committee or any creditor if he does not perform his obligations or his conduct threatens the creditors' interests.

18 Claims and appeals

How is a creditor's claim submitted and what are the applicable time limits? How are claims disallowed and how does the creditor appeal a disallowance?

A creditor must submit its claim to the trustee/s through the bankruptcy court within one month from the publication of the court's decision commencing the bankruptcy proceedings. The creditor should indicate the value and the basis of his claim, as well as if he claims any security interest over debtor's assets. If a creditor misses the initial one-month period he may still submit its claims within five months following the expiration of the initial one-month period. Such late claims are reviewed by the trustee/s and the court under the same procedure. However, a late creditor may not dispute a claim already accepted or a distribution of proceeds already made. A creditor who has missed this final deadline for submission of his claim will forfeit its claim, unless there was a pending litigation with respect to the claim.

The trustee/s draw up, within 14 days from the expiry of the initial one-month period, a list of accepted and disallowed claims. A notification that the lists are ready is published in the State Gazette and the lists are made available by the court. If the claim is not accepted or is partly accepted, the creditor may object before the trustee/s within 14 days from publication of the notice. The trustee/s will review the objection in the presence of the creditor, and the debtor and will take a final decision. If it is to reject the claim, the objection of the creditor will be reviewed by the court within 14 days from the preparation of the list of accepted claims by the trustee/s. If the court upholds the objection it will include the claim in the list of accepted claims. If the court does not uphold the objection, the creditor is entitled to lodge a claim with the bankruptcy court to prove his claim.

19 Priority claims

What are the major (a) governmental and (b) non-governmental privileged and priority claims in liquidations and reorganisations

The claims of the creditors are satisfied in the following order of priority:

1. claims secured by a mortgage or pledge from the sale proceeds of the mortgaged or pledged assets;
2. claims for which a detention right is being exercised from the sale value of the asset detained;
3. the bankruptcy expenses;
4. claims under employment contracts arising not earlier than one year prior to the date of the commencement of the bankruptcy proceedings;
5. alimony due from the debtor to third parties;
6. public claims of the state or a municipality (such as tax and customs duties, fees, contributions to the social security funds, etc), arisen prior to the commencement of the bankruptcy proceedings;
7. claims resulting from the continuation of the debtor's business arisen after the commencement of the bankruptcy proceedings, but unpaid at maturity;
8. other unsecured claims;
9. interests over unsecured claims accrued after the commencement of the bankruptcy proceedings and loans granted by a shareholder of the debtor as well as receivables arising out of transaction without compensation.

If the sale proceeds are insufficient to pay in full all claims in a class of priority (other than classes 1 and 2) they are distributed among all creditors within the class proportionately.

20 Distributions

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

Distribution to the creditors cannot be made before the debtor has been declared bankrupt. Distribution can be made whenever there is adequate cash in the bankruptcy estate. The trustee/s prepare a list for distribution based on the privileges of claims. The list is only partial until all claims are fully paid or the entire bankruptcy estate is converted into cash with the exception of the assets that cannot be sold. The debtor, or a creditor, or the creditors' committee may object to the distribution list before the court within 14 days from making the list publicly available in the court's premises. The distribution list must be approved by the court. The final distribution takes place once all the assets of the estate have been realised (excluding assets that cannot be sold). The final distribution list is voted at the final creditors' meeting .

Distributions to the creditors within a reorganisation process are made in compliance with the reorganisation plan.

21 Voidable transactions

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?

Certain transactions made by the debtor after the date of the court's decision to commence the bankruptcy proceedings are null and void with respect to the creditors. These are:

- discharge of a debtor's obligation arisen prior to the date of the court's decision commencing the bankruptcy proceedings, not in the manner described in the bankruptcy rules;
- creation of a mortgage or pledge over an assets of the bankruptcy estate;
- any transaction involving an asset of the bankruptcy estate.

Other transactions made by the debtor between the initial date of the insolvency or, respectively, over-indebtedness and the date of opening the bankruptcy proceedings, are also null and void with respect to the creditors:

- payment of a debtor's monetary obligation;
- any transaction with an asset of the bankruptcy estate for no compensation or with compensation significantly less than the value of the asset;
- creation of a security interest over an asset of the bankruptcy estate.

Certain transactions made by the debtor within the so-called 'suspect periods' prior to the commencement of the bankruptcy proceedings can be avoided by the court upon a request by the trustee/s or a creditor, filed not later than one year from the commencement of the bankruptcy proceedings. These are transactions affecting the debtor's property:

- a transaction for no compensation (other than normal gifts) in favour of a husband or relative+ made within three years prior to the commencement of the bankruptcy proceedings;
- a transaction for no compensation in favour of a third party made within two years prior to that date;
- a transaction for a compensation significantly lower than the

value of the asset made within two years prior to that date;
- discharge of a monetary obligation by transfer of ownership over an asset made within three months prior to that date, if the return of the asset within the bankruptcy estate would increase the amount the creditors would receive;
- creation of a mortgage, pledge or other security interest for a previously unsecured claim made within one year prior to that date or within two years if the claim belonged to a shareholder or partner of the debtor;
- a transaction made within two years prior to that date with a general partner or shareholder holding more than 20 per cent of the debtor's stock or a director or another person controlling it, if it prejudices creditors.

Any asset that has changed hands as a result of an avoided transaction must be returned in the bankruptcy estate. Any asset that was received by the debtor under such a transaction must also be returned to the third party. If the asset is not within the bankruptcy estate or if cash is due, the third party becomes a creditor in the bankruptcy proceedings.

22 Directors and officers

Do corporate officers and directors have personal liabilities for any pre-bankruptcy actions or for particular types of claims? Can they be subject to other sanctions for other reasons?

The directors of a company are obliged to perform their duties in view of the company's interests.

They are jointly and severally liable to the company for all damages wilfully caused to the company as a result of their activity. However they cannot be held personally liable for the debts of a company towards its creditors. The only exception is connected with their obligation to file a petition for commencement of bankruptcy proceedings within 15 days of the company becoming insolvent or overindebted. Failure to do so leads to their joint liability towards creditors for damages resulting from such a delay. A prison term of up to three years or a fine can be imposed in such case.

The directors of a joint-stock company are obliged to convene a shareholders' meeting if the company's losses exceed half of its capital. The manager of a limited liability company is obliged to convene a shareholders' meeting immediately if the company's losses exceed 1/4 of its capital.

Directors may also be held criminally liable for wrongful conduct prior to the opening of bankruptcy proceedings if such conduct has resulted in the bankruptcy of the company and has caused damages to the creditors. Such conduct may constitute:
- failure to exercise the due diligence of a responsible businessman (including due performance of their obligations as directors) while managing the company's business;
- involving the company in risky transactions not connected with its regular business;
- incurring of personal, family and other expenditures that are obviously not connected with the company's business and are not appropriate to the personal financial status of the director;
- failure to prepare an annual financial statement and annual balance sheet of the company or preparing it incorrectly.

23 Creditor enforcement

Are there processes by which a business can be liquidated outside of a bankruptcy process (e.g by seizure by a creditor)? Outside of court proceedings? How are these processes carried out and what are the consequences?

Dissolution of a company by a creditor outside bankruptcy proceedings

A business of a debtor cannot be liquidated by a creditor outside the bankruptcy proceedings. There is a procedure for winding-up a company (described in 25 below) which however may be started only upon a resolution of its shareholders;

Enforcement of a creditor's claim after the commencement of bankruptcy proceedings outside such proceedings

Once bankruptcy proceedings have commenced, the creditors cannot enforce their claims against the debtor and/or lodge new claims outside the bankruptcy proceedings, with the exception of the cases mentioned in 7 above. A creditor may enforce his claim against the debtor on the basis of the reorganisation plan.

Enforcement of a creditor's claim when no bankruptcy proceeding has commenced without judicial intervention

Outside of bankruptcy proceedings a creditor may enforce his claim only after he has obtained a court judgment or an arbitration award. Without a judgment or award the creditor may directly enforce his claim through the executory judge only in limited exceptional cases (eg if the claim arises from a promissory note or an agreement with a notarised signature, etc). The enforcement can be over any asset of the debtor which is sold by the executory judge, and the creditor satisfies his claim out of the sale proceeds.

A creditor may enforce his rights outside of court proceedings in the following cases:
- When the creditor is secured by a commercial pledge and the pledge agreement is in writing, bears an authentic date (eg certified by a notary) and expressly provides for such a possibility, the creditor may sell the pledged property alone without judicial intervention, provided the pledged asset has a market value.
- When a creditor is secured by a non-possessory pledge he can sell the pledged asset without judicial intervention. The creditor must record in the Register of Special Pledges that he undertakes enforcement over the pledged asset. The debtor must be notified of the enforcement. The procedure is administered by a depository (an accountant appointed by the creditor), who opens a bank account in which the sale proceeds of the pledged asset should be deposited. The sale proceeds are distributed to the creditors secured by a special pledge over the asset.

24 Informal restructurings

Can a restructuring be carried out without formal proceedings? If so, how are such restructurings implemented?

Prior to the commencement of bankruptcy proceedings a restructuring can be carried out informally by an agreement between the debtor and the creditors. The law does not contain any special restriction as to what such informal restructuring agreements may or may not include.

At any stage of the bankruptcy procedure the debtor may enter into a settlement agreement with the creditors, provided all creditors with accepted claims consent to the agreement. The conclusion of the agreement results in termination of the bankruptcy procedure. However, if the debtor fails to perform his obligations under the settlement agreement, any creditor hold-

ing more than 15 per cent of the value of claims may require the court to resume the bankruptcy procedure without the need to prove insolvency or over-indebtedness.

25 Corporate procedures

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

A company may be wound-up without bankruptcy proceedings for example because its fixed term of existence has expired, or its purpose has been finally achieved or because the shareholders' meeting has so decided. A company may also be involuntary liquidated by the court if it engages in illegal activity. The shareholders' meeting of a joint-stock company is obliged to resolve to wind up the company if its assets are below the required minimum capital for more than one year.

A company with unlimited liability must be dissolved upon the physical death or legal termination of a partner, unless otherwise decided by partners.

Upon a decision on the dissolution of the company, a liquidation procedure is opened. Liquidators are appointed by the shareholders' meeting, which also determines the term of the liquidation process (it cannot be shorter that six months). A notification to the creditors is published in State Gazette so that they are able to submit their claims with the liquidator. There is a mandatory six-month period between the publication of this notification and the distribution of the liquidation proceeds. Generally, within a liquidation process, the company must terminate its business transactions, discharge its obligations, collect its receivables, convert its assets into cash and distribute the liquidation proceeds, if any, to the shareholders.

During the process of liquidation of a company bankruptcy proceedings can be started against it if the necessary pre-conditions exist. In such case the liquidation will be stopped, trustee/s appointed and the company declared bankrupt.

26 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

When all of the debtor's liabilities to its creditors are paid or the bankruptcy estate is depleted, a decision of the bankruptcy court is enacted which concludes the bankruptcy proceedings. By this decision is also enacted deletion of the debtor from the Commercial Register, except when assets from the bankruptcy estate have remained undistributed after satisfaction of all creditors. The court decision is subject to publication in the State Gazette and can be appealed within seven days from the date of publication before the second instance court.

Reorganisation cases are concluded upon the decision of the bankruptcy court by which the reorganisation plan is ratified.

27 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?

Currently the UNCITRAL Model Law on Cross-Border Insolvency is not under consideration in Bulgaria. It is expected to be taken into account in the process of preparation of the next amendments of the general bankruptcy provisions contained in Chapter IV of the Commerce Act. However, it is not certain when exactly this preparation will start but most probably it will be early in 2002.

28 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 judgements?

A Bulgarian court will recognise a foreign judgment declaring bankruptcy on the basis of reciprocity if it is issued by a competent authority of the state where the debtor's seat is.

Bulgaria will recognise the powers of a trustee appointed by a foreign judgment, unless such powers are inconsistent with Bulgarian public policy rules. On a request by the foreign trustee, the debtor or a creditor, the Bulgarian court may open a subsidiary bankruptcy proceeding against the foreign debtor declared bankrupt by the foreign court if the debtor has considerable assets in Bulgaria. The subsidiary bankruptcy proceedings will only concern the assets in Bulgaria. Any assets remaining after the final distribution to the creditors under the subsidiary proceedings will be transferred abroad to the main bankruptcy proceeding.

Foreign creditors participate in bankruptcy proceedings in Bulgaria in the same way as domestic creditors.

As a candidate for membership to the European Union Bulgaria is obliged to implement the European legislation, which includes the EU Regulation governing cross-border insolvency proceedings.

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