

Bulgaria

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Legislation

1 What legislation is applicable to bankruptcies and reorganisations?

The insolvency legislation of Bulgaria is mainly included in the Commercial Act (CA).

This act is applicable to the insolvency of:

Traders

- ETs or sole proprietors;
- unlimited liability associates in a company;
- companies registered in the country;

Not-for-profit organisations

- non-profit bodies corporate registered in the country and carrying out business activity;
- persons concealing business activity by acting as insolvent debtor.

A special regime is applicable to certain types of trading company outside of the one established by the CA:

- the Insurance Code, which is applicable to the insolvency of underwriters; and
- the Bank Insolvency Act, which is applicable to the insolvency of commercial banks.

Excluded entities

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

Insolvency proceedings are not applicable to public enterprise companies which exercise a state monopoly or were organised by a special act.

Insolvency proceedings cannot be opened against unincorporated associations that do not carry out business activity, nor against natural persons.

Secured lending and credit (immovables)

3 What are the principal types of security devices (eg, mortgages, etc) that are taken on immovable (real) property?

Mortgages are the main security established over immovables. In the event of insolvency, the mortgagee will be preferred in the enforcement stage.

Secured lending and credit (moveables)

4 What are the principal types of security devices (eg, mortgages, etc) that are taken on moveable (personal) property?

Pledges, registered pledges and chattel liens are the most frequently used guarantees over chattels.

The pledge is preferred in the enforcement stages and has actual possession of the pledged property.

In the case of registered pledges, the object of which can be an entire enterprise, corporate shares, book-entry securities, rights to patents, equipment and machines, etc, the actual possession remains with the debtor. In the event of insolvency, the creditor secured under a registered pledge is entitled to the same right of privileged satisfaction from the registered pledge as the creditor with an ordinary pledge, however, in the event that the creditor with a registered pledge started the procedure of satisfaction from the registered pledge before the opening of the pledgor's insolvency proceedings, the satisfaction procedure thus started shall not be stopped.

Unsecured credit

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

The insolvency procedure is a collective procedure for the satisfaction of all creditors. Unsecured creditors are satisfied from the property remaining after the satisfaction of those secured by a mortgage or pledge, of the state and debtor personnel and the payment of procedural expenses.

Security measures applications are considered in short terms but in certain cases, the court will require the submission of cogent written evidence or the provision of security by the creditor.

Courts

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

The competent courts in insolvency matters are the regional courts in the place of registration of the insolvent debtor. The decisions of the regional court on insolvency matters can be appealed to the Supreme Court of Cassation.

Voluntary liquidations

7 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?

Unlike insolvency, liquidation presumes that the company is solvent, ie, that it has sufficient property available to satisfy its creditors. In the case of liquidation, a receiver shall be appointed

who takes charge of the winding-up of the company. In the event that during the course of the liquidation, it is established that the company lacks sufficient property and funds to satisfy its creditors, the liquidation procedure is changed into insolvency proceedings.

Involuntary liquidations

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

The legislation associates compulsory liquidation with the hypothesis that a solvent company is terminated by a court decision (eg, for reasons of performance of unlawful activity or irregularities in its incorporation). The procedure of involuntary liquidation does not differ from that of voluntary liquidation, except that it cannot be initiated at the request of a creditor of the company.

Voluntary reorganisations

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

The legislation contains an explicit statutory framework devoted to the recovery of a debtor's business only with regard to the rehabilitation of the business of a debtor in relation to whom insolvency proceedings have been opened. There is no legal obstacle, however, to the execution of measures towards the recovery of the business even prior to the opening of the bankruptcy procedure; in that case, if they presuppose the restructuring of the debts (novation, remission, rescheduling, etc) or reorganisation or sale of the entire enterprise, or part thereof, it shall be necessary to follow the general procedure provided for the performance of such legal actions.

Involuntary reorganisations

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

In case of registered pledge over the enterprise, the creditor can appoint the managers when default in the obligation is present.

Mandatory commencement of insolvency proceedings

- 11 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 debtor who becomes insolvent or over-indebted must apply within 30 days for the opening of insolvency proceedings.

Doing business in reorganisations

- 12 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?

The debtor with regard to whom insolvency proceedings have been opened continues his activity under the supervision of a receiver. By the decision of the court, if the debtor jeopardises the interests of creditors with his actions, he can be deprived of the

right to manage and dispose of his property and such right will be vested in the receiver.

Sale of assets

- 13 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?

Within insolvency proceedings, the power of the debtor to dispose of properties from the bankrupt's estate is strongly limited due to the imposed security measures, nevertheless he is not completely deprived of the right to administer them, in certain cases where the 'usual activity' test applies.

Stays of proceedings and moratoria

- 14 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?

The commencement of a liquidation procedure (where the debtor is solvent) exercises no effect on execution and claims proceedings that have already started and does not restrict the possibility of raising claims against the debtor.

With the opening of insolvency proceedings, however, any court and arbitration proceedings involving civil and commercial lawsuits against the debtor are stopped, with the exception of labour disputes for cash receivables, and it is inadmissible to initiate new court or arbitration proceedings involving real civil or commercial action against the debtor, except for claims for the protection of rights of third parties, such as owners of items contained in the bankrupt's estate or labour dispute claims.

With the opening of insolvency proceedings, the enforcement proceedings against the property included in the bankrupt's estate are also blocked. In the event, however, that action has been undertaken to the benefit of a secured creditor, to realise the security the court can permit continuation of the proceedings if a risk exists of damaging the interests of the creditor.

Arbitration processes in bankruptcy

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

Bulgarian legislation does not allow the carrying out of arbitration procedures in insolvency proceedings. With the decision to open bankruptcy proceedings, any pending arbitration proceedings against the debtor will be stopped. They can be resumed only if the receivable which is the object of the arbitration proceedings is not included in the list of accepted or approved debts, or where an objection has been raised against it. See also question 14.

Set-off and netting

- 16 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?

A creditor can set off any liability of its own against that of the debtor if, prior to the date of the decision to open insolvency proceedings, both debts existed and were reciprocal and of the same kind and the creditor's receivable was callable. If a creditor's

receivable has become callable during the insolvency proceedings or as a result of the decision to declare insolvency, and the uniformity of the two debts has occurred as a result of the decision to declare insolvency, the creditor can perform a set-off only after the chargeable event in respect of the uniformity has occurred. The set-off statement shall be directed to the receiver.

Intellectual property assets in insolvencies

17 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?

No particular provisions pertaining to IP rights are envisaged in the insolvency legislation as to a debtor who has been given the licensing rights before the initiation of insolvency proceedings.

Post-filing credit

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

The regulation of liquidation and recovery proceedings does not contain any express rules concerning the receipt of credit by the debtor after the commencement of the liquidation or recovery proceedings.

Successful reorganisations

19 What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved?

The plan shall contain:

- the degree of debt satisfaction, the manner and timing of the payment to each class of creditors as well as guarantees for the execution of contested non-accepted debts or objects of pending court proceedings on the date on which the plan is proposed;
- the conditions under which partners in a unlimited or limited partnership are fully or partially relieved of the liabilities taken;
- the degree of satisfaction received by each class of creditors in comparison with what it would receive in the event of distribution of the property under the procedure provided by the law;
- the guarantees given to each class of creditors in connection with the implementation of the plan;
- the managerial, organisational, legal, financial, technical and other actions towards the implementation of the plan; and
- the effect of the plan on the employment of debtor workers and personnel.

With a view to the adoption of the plan and the assessment of its lawfulness, the creditors are divided into classes as follows:

- creditors with secured receivables and creditors entitled to liens;
- creditors with receivables stemming from labour law relations that arose prior to the date of the decision to open insolvency proceedings;
- creditors with public receivables of the state and municipalities, such as taxes, custom duties, charges, compulsory social insurance contributions and others, that arose before

the date of the decision to open insolvency proceedings;

- creditors with unsecured receivables; and
- creditors whose receivables derive from:
 - lawful or contractual interest on a unsecured receivable maturing after the date of the decision to open the insolvency proceedings;
 - a credit granted to the debtor by a partner or shareholder;
 - gratuitous transactions;
 - the creditors' costs related to their participation in the insolvency proceedings.

20 Do any liabilities of a debtor survive insolvency so that they are enforceable against the debtor after it has reorganised or against a purchaser of the debtor's assets in an insolvency? (Please briefly describe the types of liabilities that are in this category.)

Since the court-approved plan is mandatory for the debtor and creditors whose receivables arose prior to the date of the decision to open insolvency proceedings and creditors' receivables are transformed in conformity with the provisions of the plan, no claims can be raised after conclusion of the recovery procedure relative to their previous receivables. However, creditors can obtain writs of execution for their transformed receivables on the grounds of the plan approved by the court.

Disposition transactions, including sales effected by the debtor under a recovery procedure, are valid and purchasers cannot be prosecuted thereunder. This principle is also applicable to transactions which are envisaged to be effected with the consent of the supervisory body.

Expedited reorganisations

21 Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

There is no provision in the legislation for a summary procedure of reorganisation (recovery).

Unsuccessful reorganisations

22 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?

The adoption of the plan by the classes of creditors is at their discretion and the court may not refuse the approval of a recovery plan provided that it meets the requirements of the law.

If the recovery plan is not adopted or approved, the insolvency procedure shall continue and, after expiry of the deadline for submission of a recovery plan, the court issues a ruling whereby it declares the debtor insolvent and terminates its activity.

Bankruptcy processes

23 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?

Notification to creditors of the insolvency proceedings shall be made through the State Gazette, as well as by the entering of the actions of the insolvency court in the commercial register or summoning the creditors at their registered addresses.

Meetings of creditors can include:

- The first meeting of creditors – held by the persons included in the list of creditors as produced by the provisional receiver; this meeting has the following powers: to hear the report of the provisional receiver; to elect a permanent receiver and to submit a proposal to the court for his appointment; and to elect a committee of creditors.
- The meeting of the creditors – held after the court approves the list of receivables accepted by the receiver. It hears a report from the receiver on his activities; hears a report by the committee of creditors; elects a receiver if one has not been elected; adopts a decision to relieve the receiver and to replace him; fixes the amount of the receiver's current remuneration, its modification, as well as the amount of final remuneration; elects the creditors' committee if one has not been elected or makes changes to its composition; makes a proposal to the court about the amount of allowance for the debtor and his family; determines the procedure and manner of cash out the property of the debtor and the method and conditions of property appraisal; and determines the election of assessors and their remuneration.

Insolvency of corporate groups

- 24** 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?

The legislation does not provide for the combination of insolvency proceedings, in respect of the merger of the bankrupt estates of two or more companies, including cases where a holding company is declared insolvent and along with any one, several or all of its subsidiary companies.

Modifying creditors' rights

- 25** 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?

Under Bulgarian legislation, the rank of receivables is not subject to change by the court. There are no exceptions to this rule.

Enforcement of estate's rights

- 26** 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?

The receiver is the only authorised party to undertake action for the fill up of the insolvency mass, except for the creditors' rights as per question 31.

Claims and appeals

- 27** 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?

Creditors shall submit their claims in writing before the insolvency court within one month of the entry being made in the commercial register regarding the decision to open insolvency proceedings. It is also possible to claim a debt after the indicated term but not more than two months after its expiry; in that event, the creditor cannot challenge an already accepted debt or distribution effected and he shall satisfy himself from the balance if

distribution of the cashed out property has been performed.

The debtor or the creditor can raise written objections before the court against a debt accepted or not accepted by the receiver within a term of seven days from the announcement of the lists of claimed debts in the commercial register. Objections thus made will be considered by the court and, if unsubstantiated, the creditor or debtor can lodge a claim for the establishment of the existence of the non-accepted receivable or the non-existence of the accepted debt. The term for lodging such a claim is seven days from the announcement in the commercial register of the court ruling on approval of the list of accepted debts.

Priority claims

- 28** 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?

The order of satisfying the creditors from the bankrupt's estate is as follows:

- receivables secured with a pledge, mortgage, distraint or injunction entered under the procedure of the Registered Pledges Act – from the sum received in the realisation of the security;
- receivables by reason of which the lien is exercised – from the amount of the withheld property;
- expenses related to the insolvency;
- receivables deriving from labour law relations which arose prior to the date of the ruling to open insolvency proceedings;
- allowances due under the law by the debtor to third parties;
- public receivables of the state and municipalities arising before the date of the ruling to open the insolvency proceedings;
- receivables arising after the date of the ruling to open insolvency proceedings and unpaid on maturity, deriving from continuance of the activity;
- the remaining unsecured receivables arising before the date of the ruling to open the insolvency proceedings.

Distributions

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

In insolvency proceedings, distribution is effected by the receiver in conformity with a distribution account prepared after liquidation of the ready assets. Such distribution is carried out in accordance with the order of privileges for the individual classes of creditors with one full class being satisfied first, then the next one and so on until funds are available for distribution.

Voidable transactions

- 30** 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?

Both the payment and beneficial transactions could be annulled or in certain circumstances considered null. The annulment possibility exists for the period usually referred to as 'suspicious'. In case of annulment or nullity the considerations should be refunded to the insolvent debtor.

- 31** Does your country use the concept of a 'suspect period' in determining whether a transaction by an insolvent debtor can be annulled? (If so, how is

the suspect period established?) 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?

By the term 'suspect period', Bulgarian legislation designates the period of time during which the transactions effected are null and void or can be revoked.

Directors and officers

32 Are corporate officers and directors liable for or can they be made to pay obligations owed by their corporations (eg, amounts owed to government authorities)?

Bulgarian law does not envisage any responsibility to be borne by the management for the debts of the company.

33 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?

The director and the representative of the company respectively, are jointly and severally liable with the debtor to the creditors for damages caused thereto by any delay in performing the obligation to request the opening of insolvency proceedings after the fifteenth day. The director is obligated to announce the insolvency within 30 days of its occurrence.

Creditors' enforcement

34 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?

Provision is made for such a procedure relative to registered pledges (see question 4 treating registered pledge and certain hypotheses relative to the enforcement proceedings, and question 14 concerning the relative procedures).

Corporate procedures

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

See question 7 concerning the liquidation of companies.

It is possible for the debtor to conclude a written out-of-court agreement with all his creditors for claims accepted by the receiver. The insolvency proceedings shall then be discontinued.

Conclusion of case

36 How are liquidation and reorganisation cases formally concluded?

The insolvency proceedings may be concluded in any of the following manners:

- with the exhaustion of the bankrupts estate or upon the paying-off of debts;
- with the conclusion of an agreement on settling the payment of money debts, unless a claim has been lodged for the establishment of the non-existence of any accepted claim;
- with the approval of the recovery plan; or
- upon finding that the existing debtor property is insufficient to cover the expenses of insolvency proceedings.

The recovery proceedings conclude with the implementation of the recovery plan or with the reopening of insolvency proceedings in the event of failure to implement the plan.

UNCITRAL Model Law

37 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?

Bulgarian legislators have not taken into consideration the UNCITRAL Model Law on Cross-Border Insolvency when working out the national insolvency legislation.

International cases

38 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?

Where conditions of reciprocity exist, insolvency proceedings developing abroad, as well as the court decision declaring insolvency, if issued by an authority in the state where the debtor's seat is located, are recognised in Bulgaria.

In this connection, the receiver appointed by a foreign court decision has the rights vested by the state in which the insolvency proceedings are opened, insofar as they do not contradict the rules of public order in Bulgaria.

The law further allows for the Bulgarian court that either the receiver appointed by the foreign court or a creditor may open, at the request of the debtor, ancillary insolvency proceedings for a trader declared bankrupt by a foreign court, if he possesses considerable property in the territory of Bulgaria. In that case, the decision of the Bulgarian court to open insolvency proceedings operates only with regard to debtor's property in the territory of the Bulgaria.

Where insolvency proceedings are opened before a Bulgarian court, including in ancillary insolvency proceedings, foreign creditors enjoy equal rights to local ones.

Cross-border insolvency protocols and joint court hearings

39 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?

There is no practice at present in the Bulgarian courts connected with any joint hearing or preparing of documents jointly with foreign courts of justice.

Pending legislation

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

The aforementioned answers were coordinated with the latest amendments and addenda to the legislative acts regulating insolvency and taken into account in their drafting was the forthcoming amendment to the CA, which became effective on 1 October 2006.

With the accession of Bulgaria as an EU member-country, Regulation No. 1346/2000 of the Council of European Communities dated 29 May 2005 will become applicable to Bulgaria.

Developments under the EU Regulation on Insolvency

Proceedings

41 Please comment, if applicable, on any significant developments or recent decisions in your country involving the EU Regulation on Insolvency Proceedings.

At present, the Regulation is not yet applicable law in this country, but in the event that the country becomes member of the EU as of 1 January 2007, acts will probably be adopted to harmonise the legislation therewith.

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