

# IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

# INSOLVENCY AND CORPORATE REORGANISATION SURVEY 2014



Lead contributors: John Houghton, Howard Lam  
and Mitchell Seider

**LATHAM & WATKINS**

# SURVEY PARTICIPANTS

## AUSTRIA

BINDER GRÖSSWANG

## BRAZIL

FELSBERG  
ADVOCADOS

## CROATIA

MACESIC & PARTNERS

## CYPRUS

NEOCLEOUS

## CZECH REPUBLIC

bh

## FRANCE

ALLEN & OVERY

## GERMANY

DENTONS

## GREECE

KARATZAS & PARTNERS LAW FIRM

## HONG KONG

LATHAM & WATKINS

## INDONESIA

DNC  
ASSOCIATES AT WORK

## IRELAND

DILLON EUSTACE

## MEXICO

CREEL  
KRAUS, LUCIA GONZALEZ  
HON & PARTNERS

## NORWAY

KVALE

## PHILIPPINES

SYCIP  
SALAZAR  
& HERNANDEZ  
& GATMAITAN

## RUSSIA

CLIFFORD  
CHANCE

## SPAIN

BAKER & MCKENZIE

## SOUTH KOREA

YOON & YANG  
법무법인(유) 화우

## SWITZERLAND

meyerlustenberger | lachenal

## UNITED KINGDOM

LATHAM & WATKINS

## UNITED STATES

LATHAM & WATKINS

## HONG KONG

HONG KONG MONETARY AUTHORITY  
香港金融管理局

## NEW ZEALAND

RESERVE  
BANK  
OF NEW ZEALAND

## EUROPE

KPMG

## UNITED STATES

LAZARD

IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

## Greece

Catherine M Karatzas and Aggeliki Tsatsi, Karatzas &amp; Partners

**Section 1: CREDITORS' RIGHTS****1.1 When may a company seek relief from creditors? Must a company be insolvent?**

A company may seek relief from its creditors, either by filing for bankruptcy (and for the grant of protective measures until the issuance of the decision declaring bankruptcy), in case of either current or threatened cessation of payments, or by pursuing one of the two pre-bankruptcy procedures provided for by the Greek Insolvency Code (GIC): rehabilitation or special liquidation. In order to file for rehabilitation, a company must be in a situation of current or threatened general inability to perform its due monetary obligations, while to file for special liquidation, current or threatened cessation of payments is a prerequisite.

**1.2 Does an automatic stay against creditor action arise upon filing of a bankruptcy case?**

No automatic stay arises upon filing of bankruptcy. The debtor (or anyone else who has legal interest) can file a separate application for the grant of protective measures (including the stay of creditor actions) until the publication of the court decision declaring bankruptcy.

**1.3 Who administers the estate following commencement of a voluntary bankruptcy case?**

The estate is administered by the bankruptcy trustee who is appointed by the court.

In certain cases, the court may provisionally allow the continuation of the operation of the debtor's business by the debtor itself.

**Section 2: DEBTORS' RIGHTS****2.1 Does the debtor have an exclusive right to propose a reorganisation plan?**

The debtor can submit to the court a reorganisation plan either simultaneously with the bankruptcy petition or within a time period of four months from the declaration of bankruptcy. This can be extended by the bankruptcy court once and for up to three months, provided that it is proven that the delay caused by the extension is not to the detriment of the creditors and that there is a high probability that the reorganisation plan will be accepted by the creditors.

Moreover, if the debtor has not submitted a reorganisation plan within

the stated time period, the bankruptcy trustee can submit a reorganisation plan within three months from the lapse of the period, provided that the bankruptcy trustee has already drafted his report under article 70 of the GIC (among others, on the financial status of the debtor, the causes of bankruptcy, the prospects and viability of the business and the chances of success of a reorganisation plan). Such time period may be extended by the bankruptcy court under the aforementioned conditions.

**2.2 What are the voting requirements for approval of a plan?**

In order for the reorganisation plan to be accepted, the votes of creditors corresponding to 60% of all claims announced in the context of bankruptcy and 40% of secured claims (claims secured by a security in rem, a special privilege or a mortgage prenotation) are required.

**2.3 May a plan be approved over the objection of a creditor or a class of creditors (ie does the concept of a cram-down exist)?**

A plan can be approved over the objection of a creditor or a class of creditors, as long as the above percentages are met and the objecting creditors are not receiving less than they would receive in a bankruptcy situation and that creditors that are in the same situation are treated equally.

**2.4 Is post-petition financing able to receive super-priority status?**

Post-declaration of bankruptcy financing is considered group credit (that is, a debt created after the declaration of bankruptcy, as a consequence of the actions of the bankruptcy trustee and in the context of the bankruptcy procedure), and therefore enjoys a super-priority status under law.

Post-petition and pre-declaration of bankruptcy financing necessary for the continuation of the company's operation, provided in the context of a rehabilitation or reorganisation plan, enjoys a first-rank general privilege. However, the relevant claims are satisfied after the deduction of judicial expenses, of expenses concerning administration of the bankruptcy estate and of any group credit.

The above ranking cannot be modified by virtue of an agreement between the debtor and the financing party.

**2.5 Can the debtor sell all or a portion of its assets through a going concern reorganisation plan or otherwise?**

In principle, only the bankruptcy trustee can sell all or a portion of the

debtor's assets in case of bankruptcy. However, the debtor can also proceed to such sales in the context of a reorganisation plan or through the special liquidation procedure. No stalking horse bids are allowed. Credit-bidding is allowed, only to the extent that an auction takes place under the provisions of Greek Code of Civil Procedure, in which case the preferred bidder who has initiated the auction procedure can offset his claim against the auction price, provided that no other creditors have announced their claims.

## 2.6 What are the duties of directors of an insolvent company?

The directors of a company in cessation of payments status are obliged to file for bankruptcy within 30 days from the cessation of payments date. Moreover, they are obliged to continue business as usual until declaration of bankruptcy, without proceeding to any preferential treatment of creditors during the suspect period.

## Section 3: CONTRACTS AND SUBORDINATION

### 3.1 How are executory contracts treated?



Executory contracts remain in principle enforceable, with the exception of those of a personal nature and those which are terminated in case of bankruptcy under special legal provisions (for example leasing agreements). The bankruptcy trustee can, however, choose either to assume or to reject instantaneous executory contracts. Moreover, he can transfer executory con-

tracts (either instantaneous or continuous ones) to third parties, even if the transfer is forbidden by the terms of the contract and even without the consent of the counterparty, following an approval by the court, which is granted under specific conditions.

### 3.2 Is contractual subordination enforceable?



Contractual subordination is valid between the contracting parties and is enforceable on them. However, it is not taken into account directly by the person responsible for the distribution of the proceeds from the liquidation of the bankruptcy estate. Such distribution takes place under the relevant mandatory legal provisions on the ranking of claims. It is the creditors that, following distribution, have to make payments to one another in order to comply with any contractual subordination agreements.

## Section 4: OTHER MATERIAL CONSIDERATIONS

### 4.1 What other major stakeholders (eg governmental or regulatory institutions) could have material impact on the outcome of the reorganisation?

No other major stakeholders could have material impact on the outcome of the reorganisation. As mentioned above, no stalking horse bids are allowed, while credit-bidding is only partially allowed under special circumstances.



#### Catherine M Karatzas

Karatzas & Partners  
8 Omirou Street  
105 64 Athens, Greece  
T +30 210 371 3600  
F +30 210 323 4363  
E: c.karatzas@karatza-partners.gr

#### About the author

Catherine Karatzas is managing partner at Karatzas & Partners. She received her LLB in Hellenic Law at the National and Kapodistrian University of Athens and her LLM from Columbia University. Karatzas was an associate at Shearman & Sterling from 1988 to 1992 before joining the firm.

She is a member of both the Athens and New York State Bar, and speaks Greek, English, French and Spanish. Her practice areas include securities law, M&A, banking and finance as well as shipping finance.



#### Aggeliki Tsatsi

Karatzas & Partners  
8 Omirou Street  
105 64 Athens, Greece  
T +30 210 371 3600  
F +30 210 323 4363  
E: a.tsatsi@karatza-partners.gr

#### About the author

Aggeliki Tsatsi is an associate at Karatzas & Partners. She received both her LLB in Hellenic Law and LLM in civil law from the National and Kapodistrian University of Athens, and is a member of the Athens Bar Association.

She speaks Greek, English, French and German, and she practises civil law, insolvency, labour, litigation, and company and commercial law.

<b>Key</b>  Generally favourable to creditors  Neutral or neither favourable to creditors or debtors  Generally favourable to debtors  Creditors' rights  Debtors' rights  Contracts and subordination	CREDITORS' RIGHTS		DEBTORS' RIGHTS					CONTRACTS & SUBORDINATION	
	Automatic stays	Administrator	Reorganisation plan	Voting requirements	Cram-downs	Post-petition financing	Asset sales	Executory contracts	Contractual subordination
<b>Austria</b> Binder Grösswang									
<b>Brazil</b> Felsberg Advogados									
<b>Croatia</b> Macesic & Partners									
<b>Cyprus</b> Andreas Neocleous & Co									
<b>Czech Republic</b> BBH									
<b>France</b> Allen & Overy									
<b>Germany</b> Dentons									
<b>Greece</b> Karatzas & Partners									
<b>Hong Kong</b> Latham & Watkins									
<b>Indonesia</b> DNC Advocates At Work									
<b>Ireland</b> Dillon Eustace									
<b>Mexico</b> Creel García-Cuellar Aiza y Enriquez									
<b>Norway</b> Kvale Advokatfirma									
<b>Philippines</b> SyCip Salazar Hernandez & Gatmaitan									
<b>Russia</b> Clifford Chance									
<b>South Korea</b> Yoon & Yang									
<b>Spain</b> Baker & McKenzie									
<b>Switzerland</b> Meyerlustenberger Lachenal									
<b>UK</b> Latham & Watkins									
<b>US</b> Latham & Watkins									