

1 Who may insolvency proceedings be brought against?

Bankruptcy (*ptóchevsi*): A bankruptcy order (*diátagma ptóchevsi*) is made only against a natural person who is insolvent.

Winding up (*ekkathárisi*): A winding-up order (*diátagma ekkathárisi*) is made in respect of any legal person. A voluntary winding up (*ekoúsia ekkathárisi*), out of court or subject to court supervision, likewise relates to a legal person.

2 What are the conditions for opening insolvency proceedings?

Bankruptcy: The legislative provisions on the bankruptcy of natural persons are to be found in the Bankruptcy Law (*perí Ptóchevsi Nómos*, Chap. 5) which has been amended substantially in the last two years in order to reflect the changing economic and social situation.

A bankruptcy petition may be presented either by a creditor or by the debtor himself or herself, for debts of more than EUR 15 000, provided that an act of bankruptcy has been committed and that the debtor was in Cyprus in person or was habitually resident in Cyprus or carried on business in Cyprus or was a member of a firm or partnership that carried on business in Cyprus.

A debtor commits an act of bankruptcy (*práxi ptóchevsi*), inter alia, where:

- (a) a creditor secures a final judgment against him or her, for any amount, and the debtor fails to pay;
- (b) he or she submits a declaration of inability to pay his her debts;
- (c) he or she submits a bankruptcy petition;

- (d) a personal repayment plan to which he or she was party is considered to have failed or to have been terminated in accordance with the provisions of the Law regarding the Insolvency of Natural Persons (*perí Aferengyótita Fysikón Prosópon Nómos*).

Winding up of companies: A company may be wound up either because it is unable to pay its debts or by means of a special resolution of the company for it to be dissolved through the liquidation of its property and the repayment of all or part of its debts. A windingup order can be made if a company is unable to pay its debts. The amount due must exceed EUR 5 000. A petition for winding up is submitted to the court either by a creditor or by the shareholders.

Voluntary winding up:

There are three kinds of voluntary winding up:

Creditors' voluntary winding up (*ekoúsia ekkathárisi apó pistotés*): This is an outofcourt winding up that takes place if the company is **insolvent** and its board of directors decides to wind it up. A creditors' voluntary winding up starts with the convening of a meeting of creditors to consider a special resolution for voluntary winding up that has been passed by the general meeting of the company's shareholders.

Members' voluntary winding up (*ekoúsia ekkathárisi apó méli*): This is likewise an outofcourt winding up, which is initiated by special resolution of the general meeting of the shareholders when the company is **solvent**.

Voluntary winding up subject to the supervision of the court (*ekoúsia ekkathárisi ypó tin eoptela tou Dikastíriou*): When a company has passed a resolution for voluntary winding up, the court may make an order that the winding up is to proceed under court supervision.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

Bankruptcy: The bankruptcy estate consists of all property which belongs to or is vested in the bankrupt at the commencement of the bankruptcy proceedings or which is acquired by or devolves upon the bankrupt before his or her discharge, other than the property indispensable for the bankrupt's survival and that of his or her family.

Property acquired after the commencement of bankruptcy proceedings and before discharge from bankruptcy or annulment of the bankruptcy forms part of the bankruptcy estate.

Winding up: The property within the scope of the liquidation is the property that belonged to the company before the winding-up order was made or before the date of the special resolution for voluntary winding up.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Bankruptcy: When a bankruptcy order is made, the official receiver (*epísimos paralíptis*) becomes the administrator of the bankrupt's property. At a later stage, any licensed insolvency practitioner (*adeiodotiménos sýmoulos aferengyótita*) may be appointed administrator (*diacheiristís*). The administrator's task is to sell the bankrupt's property and to distribute the proceeds to the creditors. When the official receiver or any insolvency practitioner undertakes the duties of administrator, the bankrupt retains ownership of all of the property vested in him or her, which, however, will be managed solely by the administrator from the date of commencement of the bankruptcy proceedings.

Winding up: When a winding-up order is made, if no liquidator is appointed by the creditors, the official receiver automatically becomes liquidator (*ekkatharistís*), unless a licensed insolvency practitioner is appointed as liquidator on the application of the official receiver to the court, or following a decision by the meetings of creditors and contributories of the company. The liquidator's task is to realise the property of the company being dissolved and to distribute the proceeds to its creditors and contributories. Once the official receiver or insolvency practitioner undertakes the duties of liquidator of the property of the legal entity in liquidation, even though the company retains ownership of all of the property vested in it, the property is managed by the liquidator, for the purpose of realising it, from the date of commencement of the winding-up proceedings.

Voluntary winding up: In the case of voluntary winding up, the company ceases, from the commencement of the winding up proceedings, to carry on its business, except in so far as necessary for its beneficial winding up. The task of the liquidator is to realise the property of the liquidated company and to distribute the proceeds to the creditors and contributories.

Creditors' voluntary winding up: The creditors and the company nominate, at their separate meetings, the insolvency practitioner they wish to appoint as the company's liquidator, but in case of disagreement between the two meetings the person appointed as liquidator is the insolvency practitioner nominated by the creditors.

Members' voluntary winding up: The company appoints as liquidator, by decision of the general meeting, a licensed insolvency practitioner, who takes responsibility for settling the company's affairs and distributing its property. Upon the appointment of a liquidator the powers of the directors cease, except to the extent that a general meeting of the company or the liquidator approves their continuation.

Voluntary winding up subject to the supervision of the court: When making an order for winding up subject to supervision, the court may by that order or a subsequent order appoint an additional liquidator. A liquidator appointed by the court has the same powers, is subject to the same obligations and stands in the same position as a liquidator appointed by a special resolution or by a decision of the creditors as described above.

5 Under which conditions may set-offs be invoked?

Bankruptcy: The legislation provides that a set-off may be invoked where there are mutual credits or mutual debts or other mutual dealings between the bankrupt and any other person prior to the making of the bankruptcy order, unless at the time of giving credit the other person was aware of the act of bankruptcy committed by the bankrupt.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Bankruptcy: Existing lawful contracts to which the bankrupt is a party remain in force and the bankrupt remains personally responsible for complying with their terms.

Winding up: Existing lawful contracts to which a company in liquidation is party remain in force. The same applies to lawful contracts concluded by companies which are being wound up voluntarily.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

Bankruptcy: Where an action is brought against a bankrupt after a bankruptcy order is made, the leave of the court must be obtained to allow the action to proceed.

Winding up: Where an action is brought against a company in liquidation after a windingup order is made, the leave of the court must be obtained to allow the action to proceed.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Bankruptcy: Actions already pending against a bankrupt continue normally without needing the court's leave to allow them to proceed.

Winding up: Actions already pending against a company in liquidation can proceed only with the court's leave. The handling of such actions becomes a matter entirely for the official receiver or the company's liquidator.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

Bankruptcy: To take part in *bankruptcy* proceedings a creditor must have completed the forms for proof of debt (*epallithevsi chréous*) and supplied all the supporting evidence. The official receiver or the insolvency practitioner who acts as administrator then decides to admit or reject the proofs. Subsequently, a dividend is paid to creditors in the order of priority laid down in the Bankruptcy Law. Once their proofs have been entered, creditors can participate in meetings convened by the official receiver or the insolvency practitioner liquidating the company.

Winding up: To take part in *windingup* proceedings a creditor must have completed the forms for proof of debt and supplied all the supporting evidence. The same procedures apply as in the case of bankruptcy, except that here the dividend is distributed in accordance with the Companies Law (*perí Etaireión Nómos*, Chap. 113).

The same applies to voluntary winding up, and in particular to creditors' voluntary winding up, where creditors participate directly from the beginning of the proceedings, when they are convened to propose a liquidator of their choice.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

Bankruptcy: The administrator has the power and authority to sell immovable property in any manner that he or she considers to be appropriate and in the interests of the proceedings. Subsequently, a dividend is paid to creditors in the order of priority laid down in the Bankruptcy Law. In the case of mortgaged property, a court order must be obtained.

Winding up: The liquidator of a company in liquidation may sell the company's immovable property in any manner that he or she considers to be in the interests of the proceedings. Subsequently, a dividend is paid to the creditors following the order of priority laid down in the Companies Law. In the case of mortgaged property, a court order must be obtained. The same rules apply to voluntary winding up.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

Bankruptcy: When a bankruptcy order is made, creditors may submit proof of debts which had arisen up to the date of the bankruptcy or winding-up order and which relate to claims of a fixed amount. Claims that arise after the bankruptcy order is made fall outside the scope of the bankruptcy proceedings and creditors must take action against the bankrupt himself or herself.

Winding-up: After a winding-up order is made or a special resolution for voluntary winding up is passed, creditors may submit proof of debts which had arisen up to the date of the windingup order or special resolution and which relate to claims of a fixed amount. Claims which arise after the winding-up order or special resolution fall outside the scope of the winding-up proceedings and creditors must take action against the officers of the company in liquidation.

12 What are the rules governing the lodging, verification and admission of claims?

Bankruptcy: When a bankruptcy order is made, each creditor must, within 35 days of the date of publication of the order, submit proof of debt to the official receiver or administrator in writing. The proof must give details of the debt, state the names of all guarantors and indicate whether the creditor has security. The official receiver or administrator must, within 10 days, admit or reject the proof, in writing, for purposes of the dividend. A creditor or guarantor who is unhappy with the decision of the official receiver or administrator may challenge it in court within 21 days.

Winding up: When a winding-up order is made, each creditor must, within 35 days of the date of publication of the order, submit proof of debt to the official receiver or liquidator in writing. The proof must give details of the debt, state the names of all guarantors and indicate whether the creditor has security. The official receiver or liquidator must, within 10 days, admit or reject the proof, in writing, for purposes of the dividend. A creditor or guarantor who is unhappy with the decision of the official receiver or liquidator may challenge it in court within 21 days. The same rules apply to voluntary winding up.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

Bankruptcy: When the bankruptcy estate is distributed the debts are ranked equally and in proportion within each category (the 'pari passu rule'), unless the estate is sufficient to pay everyone in full. Claims are ranked as follows:

Actual outlays and remuneration of the administrator

Fees due to the official receiver

Expenses incurred by a creditor who is a petitioner

Preferred debts

Unsecured debts

Winding up: When the liquidation estate is distributed the debts are ranked equally and in proportion within each category (the 'pari passu rule'), unless the estate is sufficient to pay everyone in full. Claims are ranked as follows:

Actual outlays and remuneration of the liquidator

Fees due to the official receiver or liquidator

Expenses incurred by a creditor who is a petitioner

Preferred debts

Floating charges

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Bankruptcy: The bankrupt may submit a written proposal for a composition (*symvivasmós*) with his or her creditors to the official receiver or administrator. A meeting of creditors is held at which the scheme must be approved by a majority in number and three quarters in value of all creditors who have proved their debts. If the creditors accept the proposal, the bankrupt or the official receiver or administrator asks the court to approve it. Approval by the court binds all creditors who have proved their debts. When the terms of the composition are met, proved debts are deemed to have been satisfied in full. Complete closure of bankruptcy proceedings takes place when the bankruptcy order is annulled.

Winding up: Complete closure of winding-up proceedings takes place upon final dissolution or when the winding-up order is annulled.

Voluntary winding-up proceedings are closed and the liquidated company is finally dissolved three months after delivery to the official receiver of the company's final accounts, which are drawn up following the completion of any liquidation and distribution of the company's property.

However, if anyone has a legal interest in reviving a company that has been dissolved following voluntary winding up or by court order, they may do so within the two years following the dissolution, by making an application to that effect to the court.

15 What are the creditors' rights after the closure of insolvency proceedings?

Bankruptcy: In the event of annulment of the bankruptcy order, where the creditors have given their consent without having received full payment, such creditors have the right to claim the amounts owed after the annulment of the order.

Winding up: In the event of annulment of the winding-up order, where the creditors have given their consent without having received full payment, such creditors have the right to claim the amounts owed after the annulment of the order.

If anyone has a legal interest in reviving a company that was dissolved following voluntary winding up or by court order, they may do so within the two years following the dissolution, by making an application to that effect to the court.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

Bankruptcy: The cost of the making of the bankruptcy order is borne by the creditor who lodges a petition for the order. The expenses payable to the official receiver amount to EUR 500. The expenses incurred during the bankruptcy proceedings are paid from the bankruptcy estate.

Winding up: The cost of the making of the winding-up order is borne by the creditor who lodges a petition for the order. The expenses payable to the official receiver amount to EUR 500. The expenses incurred during the proceedings for winding up, liquidation and distribution of the company's property are paid from the liquidation estate.

The cost of the submission and registration of documents relating to voluntary winding-up proceedings with the official receiver amounts to a total of approximately EUR 440. The expenses incurred during the proceedings for winding up, liquidation and distribution of the company's property are paid from the liquidation estate.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Bankruptcy: Certain provisions that apply to bankruptcy proceedings permit the administrator to apply to the court in order to claim the recovery of property for the benefit of the creditors. The main provisions are the following:

A. Fraudulent transfer (*dólia metávasi*):

If the administrator or liquidator has evidence that property of a company or natural person has been transferred either without consideration or substantially below its real value, he or she may apply to the court for an order setting aside the fraudulent transfer or act.

In order for this provision to apply, the transfer must have taken place: (a) within three years before the date of a bankruptcy, unless it was in good faith and against valuable consideration, or (b) within ten years before the date of a bankruptcy, where at the time of the transfer the natural person concerned was unable to pay all of his or her debts without the aid of the property transferred. In the case of a company in liquidation, in order for an act to be considered fraudulent it must have been committed within six months before the commencement of the winding up, which is the date on which the petition for winding up was presented.

B. Fraudulent preference (*dólia protímisi*):

If the administrator or liquidator has evidence that a creditor received preferential treatment, he or she may apply to the court for a decision setting aside that treatment.

Winding up: Certain provisions that apply to winding-up proceedings permit the liquidator to apply to the court in order to claim the recovery of property for the benefit of the creditors. The main provisions are the following:

A. Fraudulent transfer:

If the administrator or liquidator has evidence that property of a company or natural person has been transferred either without consideration or substantially below its real value, he or she may apply to the court for an order setting aside the fraudulent transfer or act.

In order for this provision to apply, the transfer must have taken place: (a) within three years before the date of a bankruptcy, unless it was in good faith and in against valuable consideration, or (b) within ten years before the date of a bankruptcy, where at the time of the transfer the natural person was unable to pay all of his or her debts without the aid of the property transferred. In the case of a company in liquidation, in order for an act to be considered fraudulent it must have been committed within six months before the commencement of the winding up, which is the date on which the petition for winding up was submitted.

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