



Restructuring and Insolvency

in 57 jurisdictions worldwide

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1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

Bankruptcies and reorganisations are essentially governed by the Bankruptcy Act of 1991, as amended.

The following insolvency regimes are available under the Bankruptcy Act: cessation of payments under the supervision of a court-appointed assistant; compulsory composition with creditors; and bankruptcy. All of these are available to individuals and legal entities (companies). Persons as well as companies can go bankrupt. Bankruptcy does not provide automatic discharge. When companies are dissolved at the conclusion of the bankruptcy proceedings, the remaining debt is de facto discharged.

Apart from the insolvency regimes available under the Bankruptcy Act, an insolvent debtor may put forward a proposal for a voluntary composition. Such a composition constitutes an agreement between the debtor and all involved creditors and is governed by the general laws of contract.

The company laws (the Private Companies Act and the Companies Act) contain provisions concerning the voluntary winding-up of companies. However, it is a prerequisite that the company in question is solvent. If the company is deemed insolvent, the winding-up of the company shall take place by way of bankruptcy under the Bankruptcy Act.

2 Excluded entities

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

Up until October 2008, no legal entities were excluded from bankruptcy proceedings. In the Act on Financial Undertakings, as amended by the newly passed Emergency Act, special rules govern cessation of payments, composition and bankruptcy of financial undertakings, which may now be excluded from creditor-petitioned bankruptcy.

3 Secured lending and credit (immovables)

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

Security rights on immovable property (real estate, aircraft and ships) are created by way of mortgage (non-possessory charge).

The security interest is created by a deed of mortgage issued by the mortgagor and which addresses the relationship inter partes.

In order to obtain protection against third parties (Act on Register of Deeds), the relevant registration authority (the sheriff in the relevant district as regards real estate) must register the mortgage. These registers are open for public inspection and online access to the registers is available for retrieval of information.

4 Secured lending and credit (moveables)

What are the principal types of security devices that are taken on moveable (personal) property?

Security rights on moveable property may be created either by way of mortgage (non-possessory charge) or by a possessory charge. The difference between possessory and non-possessory charges is defined in the Act on Contractual Mortgage.

Assets available in a physical form, including chattels and certificated negotiable securities, are eligible for possessory charges. The Act on Contractual Mortgage requires that the assets are effectively removed from the control of the chargor.

Assets eligible for non-possessory charges are assets available in physical as well as dematerialised form, including for example chattels, receivables and non-certificated securities.

The Act on Register of Deeds requires either registration in a public register or provision of a notice to the affected third party.

Apart from non-possessory and possessory charges, a right similar to a security right can be created by retention of title. Such retention of title does not require any public registration, apart from retention of title to registered motor vehicles.

5 Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

The remedy available to unsecured creditors is execution. The claim of the creditor must be substantiated by a basis of execution (a judgment, written settlement, document of indebtedness, etc).

In order to obtain a judgment, the creditor must initiate legal proceedings at the district courts, which can be time-consuming if the debtor does not acknowledge the claim. If the debtor, who is summoned to attend the filing of the case, does not attend, the courts will generally accept the creditor's claim in a short period of time.

If the debtor contests the claim, it is not unusual for it to take six months to a year to obtain judgment. The process also involves costs that have to be paid by the creditor, such as court fees and legal fees. If judgment is obtained, the court awards costs to the winning party. However, the level of costs awarded by the court is, as a general rule, much lower than the real costs incurred by the legal proceedings.

After judgment has been delivered and no appeal has been lodged, the creditor can seek to enforce his or her claim through the sheriff in the relevant jurisdiction. The sheriff summons the debtor to a meeting at the sheriff's office. At that meeting, the sheriff may levy execution against the assets of the debtor. These assets must be described precisely. Attachment of earnings is not available to private creditors but only to public creditors such as the tax authorities.

If the debtor still fails to pay the debts due, the assets may be auctioned and the proceeds may be applied to settle the claim of the

creditor.

Under certain conditions, a creditor may obtain a pre-judgment attachment or preliminary seizure. However, such attachment provides that the creditor can prove before the bailiff that the creditor's possibilities of obtaining payment will be significantly reduced if attachment is not allowed. Usually the creditor has to submit a guarantee for the preliminary seizure, also it is mandatory that the creditor has to file a confirmation action with the district court.

The only special procedure applying to foreign creditors, provided that their claims are substantiated in the manner described and that the foreign judgment in question is recognised under Icelandic law, is that the debtor can demand that the foreign creditor submits a guarantee for legal costs suffered by the debtor if the creditor's claim will be rejected by the courts.

6 Courts

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

All district courts act as bankruptcy courts and deal with the insolvency regimes available under the Bankruptcy Act.

The bankruptcy courts deal with all procedural matters related to the insolvency regimes laid down in the Bankruptcy Act. With regard to substantive issues, the bankruptcy courts rule, in general, on any claims that creditors may have against the bankruptcy estate. The claims that the bankruptcy estate may have against others, including claw back or rescission claims, lie within the jurisdiction of the district courts as well.

An administrator, appointed by the bankruptcy court, handles the actual administration of the bankruptcy estate.

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?

In Iceland, a voluntary liquidation would be a bankruptcy petitioned by the debtor itself.

The company legislation contains provisions as to how the shareholders of a company may voluntarily wind-up a company. It is a condition for the application of these rules that the company is solvent.

A debtor (individual or company) that is unable to fulfil its ongoing obligations may file a bankruptcy petition at the bankruptcy court. The liquidator of a company in voluntary winding-up is under an obligation to file a petition for bankruptcy if the company is unable to pay all its debts.

The petitioning debtor is obliged to present a security for the costs concerning the administration of the bankruptcy estate. The court will not make a bankruptcy order unless the security is presented. The security is required in the form of payment of cash to the court in the amount of 250,000 Icelandic kronur (approximately €1,410). The security is waived if the debtor, without doubt, has sufficient assets to cover the costs in respect of the administration of the bankruptcy estate. In general, it is very unusual that the security is waived.

In the making of the bankruptcy order, all powers of the debtor to administrate its assets are vested in the administrator appointed by the court. Furthermore, an absolute moratorium is imposed on all creditors, which may no longer seek individual enforcement of their claims.

8 Involuntary liquidations

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

In Iceland, an involuntary liquidation would be a bankruptcy petitioned by a creditor.

Any creditor with an unfulfilled claim may petition the court for a bankruptcy order, provided that the creditor can prove that debtor is insolvent (not able to fulfil his or her obligations as they fall due). It is not a prerequisite that the claim of the petitioning creditor has matured or that the claim is legally enforceable. However, the petitioning creditor will be held liable for damages if the claim does not exist.

The petitioning creditor is liable for the costs in respect of the administration of the bankruptcy estate and will be required to pay cash in the amount of 250,000 kronur as security for this obligation. The security is waived if the debtor, without doubt, has sufficient assets to cover the costs in respect of the administration of the bankruptcy estate. In practice, it is very unusual that the security is waived.

The effects of the bankruptcy order are the same as if it were a bankruptcy petitioned by the debtor itself (see question 7).

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?

The reorganisation available under the Bankruptcy Act is cessation of payments and compulsory composition.

If a cessation of payments is accepted by the court it appoints an assistant to be proposed by the debtor, provided that the assistant fulfils the specific statutory requirements of impartiality. The assistant will usually be a lawyer with knowledge and experience in insolvency proceedings. If compulsory composition is accepted by the courts a composition negotiator is appointed. The negotiator usually is a lawyer with knowledge and experience in insolvency proceedings.

The cessation of payments imposes a general moratorium, prohibiting the unsecured creditors from exercising default remedies, including levying execution against the assets of the debtor. The debtor retains all powers to administrate its assets. Most decisions must, however, be approved by the assistant.

It should be noted that a prior cessation of payments is not a prerequisite to a proposal for a composition. A debtor is entitled to put forward such a proposal at any stage.

10 Involuntary reorganisations

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

Only the debtor is entitled to file for cessation of payments or put forward a proposal for a composition. No provisions in the Bankruptcy Act enable the creditors to initiate such proceedings.

11 Mandatory commencement of insolvency proceedings

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?

Under company law, the winding-up committee of a company which is in voluntary winding-up is under the obligation to file a petition for bankruptcy if the committee finds that the assets of the company

are insufficient to cover the liabilities.

Under the Bankruptcy Act, a debtor that is obligated to keep accounts is obligated to file for bankruptcy if its situation becomes such that it cannot pay its creditors when their claims fall due and it will not be considered plausible that its financial problems will pass within a short period of time.

Failure to meet these obligations may give rise to claims against the winding-up committee or the director personally.

12 Doing business in reorganisations

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?

During a cessation of payments, the debtor may carry on business, provided that the assistant has consented to this in advance. Such general consent given by the assistant covers all ordinary transactions in the course of normal business. Major decisions, such as the purchase or sale of main assets, cannot be made by the debtor unless the assistant consents.

The business must be conducted in such a way that the overall financial status of the debtor does not deteriorate and the positions of the creditors in relation to one another are not altered. Unsecured claims arising from the period before the cessation of payments must not be paid.

If a supplier consents to deliver goods or services during the cessation of payments and the assistant has approved the purchase on credit, the claim of the supplier will rank as a preferential claim if the debtor is subsequently declared bankrupt. Any creditors who contemplate extension of credit to a debtor in cessation of payments are therefore strongly advised to demand written consent of the assistant prior to the extension of credit. The preferential claims established during the cessation rank with priority below the preferential claims in the bankruptcy estate (costs to the administrator and other costs incurred during the bankruptcy proceeding), but above privileged claims (wages to former employees).

The court does not play any active part in the supervision of the debtor's business activities. The assistant and the creditors mainly carry out the supervision.

13 Rejection and disclaimer of contracts in reorganisations

Can a debtor in a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party?

For the sale of specific assets out of the ordinary course of business, as well as sale of the entire business during cessation of payments, see question 12.

During bankruptcy proceedings, the administrator alone is entitled to dispose of the assets, including the entire business. The administrator is not required to obtain prior consent from the creditors. No special provisions apply to such a sale, apart from the practical fact that the administrator, in general, will only sell assets with full exclusion of liability.

14 Sale of assets

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? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

Liquidations (bankruptcies)

According to the Bankruptcy Act, an absolute moratorium is imposed on all creditors on the making of a bankruptcy order, prohibiting the unsecured creditors from exercising default remedies. Items, in which the creditor has ownership, including retention of title, shall be handed over to the creditor upon request.

Enforcement of security by way of mortgage must, as a general rule, await the sale of the charged asset carried out by the administrator.

Reorganisations (cessation of payments)

Likewise, a cessation of payments and the court's decision to open negotiations for a compulsory composition per se imposes a general moratorium, prohibiting the unsecured creditors from exercising default remedies, including levying execution against the assets of the debtor.

15 Stays of proceedings and 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 liquidations and reorganisations? In what circumstances may secured or unsecured creditors obtain relief from such prohibitions?

Liquidations (bankruptcies)

Under the Bankruptcy Act, no legal proceedings can be brought against a bankrupt estate, except in cases specifically authorised by law and in public cases that may result in penalty. There are no other exceptions from that rule. However, if a company goes into bankruptcy after a case is initiated in the courts, the case can continue and the estate takes over rights and obligations in the proceedings.

Further, an absolute moratorium is imposed on creditors upon court decision of bankruptcy proceedings. This prohibits the exercise of default remedies. In cases of direct ownership of creditors (eg, assets being held by the estate), such assets shall be released to the rightful owners once the ownership is proven.

Enforcement of security must, as a general rule, await the sale of the secured asset carried out by the administrator.

Moratorium (cessation of payments)

In a moratorium or reorganisation process (termed cessation of payment in the official translation of the Bankruptcy Act), the court's decision to allow the reorganisation process imposes a general moratorium, prohibiting creditors from exercising default remedies.

16 Arbitration processes in bankruptcy

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

There is no rule in the Bankruptcy Act that allows arbitration procedures in insolvency proceedings. Even though there is a general legal framework for arbitration cases, that is not used in insolvency proceedings and would not provide the general protection provided under the Bankruptcy Act. Thus, there are no precedents on this in Iceland.

17 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 of set-off either temporarily or permanently?

According to the Bankruptcy Act, set-off may be applied against an estate if the entity claiming set-off acquired its claim at least three months prior to a certain reference day of the bankruptcy proceedings. The Bankruptcy Act further states that the entity claiming set-off must not have acquired its claim for the purpose of applying set-off and that if the entity knew or should have known, at the time of acquisition, that the debtor of the claim was insolvent set-off may not be applied.

Additionally, if a claim is to be used for set-off against an estate, the general requirements for set-off must be met, namely that the claims are mutual, due and valid. However, according to the Bankruptcy Act, set-off is possible regardless of the nature of the claim used for set-off and the main claim. The rule may be interpreted in such a way that the requirement of the claims being identical does not apply when set-off is applied in insolvency proceedings, but theory and practice does not provide a clear answer to that.

To apply set-off when the estate is under insolvency proceedings the claim and set-off notice has to be formally filed with the administrator of the estate according to the rules of the Bankruptcy Act.

18 Intellectual property assets in insolvencies

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?

The Bankruptcy Act does not contain any special provisions on intellectual property rights.

In the event of bankruptcy, the administrator can decide whether the estate wants to uphold mutual agreements (not already automatically terminated based on contractual provisions), which must include agreements on the use of intellectual property rights. The licensor may require the estate to decide whether to affirm an agreement without undue delay after having made such a request.

If the holder of the intellectual property right becomes subject to bankruptcy proceedings, it will depend on the character of the right whether it may be included in the assets of the estate. Copyrights are generally exempt from debt enforcement. The opposite applies in the case of assets exploiting the copyright in question which are generally included in the assets of the bankruptcy estate. Patent, trademark and design rights are generally included in the estate as a proprietary interest.

If the right is included in the estate, the bankruptcy will not in itself entitle the estate to terminate the agreement with the licensee with immediate effect. The right of termination is generally regulated by the parties' agreement. If no agreement has been made on termination, the Bankruptcy Act entitles the estate to terminate the agreement with usual and reasonable notice. The same applies if a longer notice of termination or non-terminability has been agreed upon. This does not apply if this longer notice or non-terminability is protected by a proprietary right.

19 Post-filing credit

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

Liquidation (bankruptcies)

The administrator assumes full control of the assets of the bankruptcy estate. Therefore, the debtor has no capacity to act on behalf of the bankruptcy estate.

If the administrator deems it necessary and appropriate (for example, in order to carry on business for a limited time) the administrator may, on behalf of the bankruptcy estate, obtain secured or unsecured loans or credits. Such debt incurred by the administrator has priority as a cost pertaining to the administration of the bankruptcy estate and has the highest priority possible.

Such loans rarely occur in practice. The reason is most likely that it is hardly ever in the estate's interest to increase its costs and also due to the business risk.

Reorganisation (cessation of payments)

In the case of cessation of payments, the debtor retains control of his or her assets. The assistant appointed by the court must approve all material decisions. Provided such approval is given, the debtor may incur secured and unsecured debts. Loans obtained with the consent of the assistant rank with priority if the debtor is subsequently declared bankrupt.

20 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? Can a reorganisation plan create releases in favour of third parties, and, if so, in what circumstances?

The debtor may put forward a proposal for a voluntary composition or a compulsory composition. Such proposals are often put forward during the debtor's cessation of payments. A prior notification of cessation of payments is not a prerequisite.

A voluntary composition requires the express consent of all creditors, who will not receive payment in full. There are no specific rules governing the voluntary composition and no requirement that all unsecured creditors are ranked *pari passu*.

The Bankruptcy Act governs a compulsory composition. There is no mandatory minimum dividend.

The following claims are exempt from the composition:

- claims created after the composition order;
- non-pecuniary claims;
- ownership claims in assets;
- secured creditors to the extent of the security involved;
- claims that would be privileged in case of bankruptcy (debts incurred during cessation of payments with the consent of the supervisor appointed by the court or wage claims);
- claims that would be satisfied by set-off if the debtor was taken to bankruptcy proceedings; and
- claims paid in full according to the dividend proposal.

The proposed composition must be accepted by a qualified majority of the creditors affected by the composition in the same proportion as the payout proportion, however by not less than 60 per cent of the creditors. The bankruptcy court must affirm the composition.

The Bankruptcy Act provides that a reorganisation plan (compulsory composition) does not create releases in favour of third parties. Notwithstanding the reorganisation plan, creditors can pursue their rights against third parties.

21 Expedited reorganisations

Do procedures exist for expedited reorganisations?

No. There are no special procedures for expedited reorganisations.

22 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?

Even if the required majority of creditors' votes has been obtained, the composition is not valid without the affirmation of a district court.

The district court denies affirmation in cases of material procedural defaults, clauses that contravene the Bankruptcy Act or if there are indications that the debtor will not be able to execute the composition.

If a composition proposal is not approved, the debtor and the creditors are basically in the same position as if a proposal had not been put forward.

Default by the debtor in performing a voluntary composition constitutes a material breach of contract and entitles the creditors to regard the composition as null and void.

Default by the debtor in performing an approved compulsory composition does not in itself annul the effects of the composition. The court may decide to annul the composition if there is fraudulent behaviour on the part of the debtor.

If a composition subsequently is annulled, the compounded debt is revived in full.

23 Bankruptcy processes

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?

At the time of ruling of bankruptcy, the district court appoints an administrator or administrators who shall manage the bankruptcy estate. The administrator's main occupation is to work primarily for the creditors.

The administrator commences the proceedings by publishing an advertisement in the Official Gazette in which it is announced that the entity has been declared bankrupt and all creditors should send the administrator their statement of claims within a period of at least two months. The statement of claims must give full information of the amounts and the origin of the respective claims. The period of two months must pass before the liquidation of estate's properties can begin. In addition to publication in the Official Gazette, the administrator shall also seek information on foreign creditors. If knowledge of such creditors exists, the administrator shall notify such creditors accordingly, either directly or by means of advertisement.

There are no formal committees under the Bankruptcy Act. Certain exception to this relates to secured creditors, whereby the administrator shall convene a secured creditors meeting in cases where the value of the secured asset will not cover all the secured creditors.

Creditors are allowed to initiate proceedings, at their own cost, against third parties against whom the bankruptcy estate might have a claim if the administrator specifically permits this. If a creditor pursues the claim, the net proceeds obtained are paid into the bankruptcy estate and distributed in accordance with the Bankruptcy Act.

24 Insolvency of corporate groups

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?

During bankruptcy proceedings in relation to a group of companies, the legal entities per se must be respected. There is thus no piercing of the corporate veil and subsidiaries are simply treated as assets.

25 Modifying creditors' rights

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?

The priority of the claims is derived from the Bankruptcy Act and is explicit. A district court is not allowed to depart from the rules of the Bankruptcy Act on the order of priority of the creditors.

26 Enforcement of estate's rights

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 possibility of the estate to pursue claims is generally not conditional on the existence of assets in the estate to pursue such claims. If there are no assets in the estate to pursue a claim, the administrator in bankruptcy will in practice ask the creditors whether one or more of the creditors will provide security for the estate pursuing the claim.

If none of the creditors will provide security and the estate abandons the possibility of pursuing the claim, then it is possible for any creditor to pursue the claim, including by bringing legal action on behalf of the estate. The creditor in question will thereafter be liable for the legal costs.

If such legal action results in assets being recovered, such assets will accrue to the estate.

27 Claims and appeals

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?

A creditor must prove his or her claim against the debtor with the administrator in writing within a time period specified in the advertisement of the bankruptcy process. The proof of claim should be accompanied by a short statement of the facts and associated with the necessary documents on which the claim is based (such as copies of invoices). Claims in currencies other than Icelandic kronur shall be converted to kronur at the exchange rate on the date of the bankruptcy order.

Claims can be proven right up to the approval of the administrator's claims registry. However, creditors are in general requested to submit their claims within two months of the bankruptcy order.

The administrator shall convene one or more meetings for the adjudication of claims proven against the estate and inform the creditors in question whether the specific claim is approved or rejected (in whole or in part).

If a claim is rejected, the administrator must notify the respective creditor. If the creditor objects to the position of the administrator, a special meeting must be convened in order to try to settle the dispute. If that does not work, and the administrator sustains his or her rejection of the claim, the creditor must initiate proceedings before the district court. Otherwise, the decision of the administrator is final.

A district court's judgment on a creditor's claim can be appealed by either the creditor or the estate as the case may be.

There are no specific provisions dealing with purchase, sale or transfer of claims against the debtor. However, in some cases purchase of a claim against a debtor with the aim of exercising set-off may constitute a voidable transaction.

28 Priority claims

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 ranking of claims is as follows under the Bankruptcy Act (official translation):

Article 109. Assets belonging to third parties are transferred to its rightful owner.

Article 110. Priority costs: (i) funeral costs (in case of individuals); (ii) expenses suffered by the insolvent estate (costs of administrator); (iii) claims that have arisen against the insolvent estate following a court ruling ordering the estate to be subject to bankruptcy proceedings by way of the insolvency administrator's agreements, or due to damage that the estate has caused other parties; and (iv) claims that have arisen after the start of the suspect period regarding the financial undertaking's arrangements that were accepted by its assistant in a moratorium or the supervisor of its composition, provided that the arrangements were within the Bankruptcy Act;

Article 111. Secured claims.

Article 112. Priority claims. After claims under Articles 109 – 111 are the following in proportion to the amount due under each claim: (i) claims for salary and other remuneration for employment by the insolvent party that have become due in the last 18 months after the start of the suspect period; (ii) claims for compensation due to the termination of an employment agreement that has occurred during the period that is referred to in numeric (i) or after the start of the suspect period; (iii) claims for vacation bonuses or vacation salaries that have come into being during the period that is referred to in numeric (i) or after the start of the suspect period; (iv) claims for payments to pension funds, sickness benefits funds or vacation funds that the insolvent party was obliged to have paid under legislation or trade union contracts during the period referred to in numeric 1 or after the start of the suspect period, as well as payments to trade unions that it was to pay during the same period; (v) claims for compensation due to the invalidity or death of a person that was employed by the insolvent party and had a work related accident that caused invalidity or death, and occurred during the period referred to in numeric (i) or after the start of the suspect period; (vi) claims by a spouse, ex-spouse or a child of the insolvent party for pension payments or alimony, concerning the period referred to in numeric (i) or after the start of the suspect period, provided the claims are supported by a decision of the authorities or a divorce settlement, and are not covered by the social security system or in a comparable manner; (vii) claims for, or regarding the treatment of, funds that the insolvent party has had in its possession as a public servant with independent funds custody; (viii) claims for the remuneration of an assistant in a moratorium or composition, as well as the necessary expenses by such person after the start of the suspect period. It must also be stated that Article 9 of the Emergency Act No. 125/2008 states that in case of insolvency, the claim of the Guarantee Fund for deposits shall have priority as provided for in Article 112, Paragraph 1 of the Insolvency Act, otherwise, it is enforceable by execution without prior adjudication or settlement.

Article 113. General claims (all other claims, except those under Article 114).

Article 114. Subordinated claims (interest and indexation after court order on bankruptcy, penalty payments, etc.).

29 Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive insolvency so that they are enforceable against the debtor after it has reorganised?

In the case of a reorganisation of the debtor's company, the reorganisation model applied will decide whether the debt may still be claimed.

In connection with a compulsory composition or a voluntary composition with creditors, the creditors' claims are written down. If the debtor fulfils its obligations under the composition, only the written down amount may thereafter be claimed. If the debtor fails to fulfil its obligations, the debt may be claimed in full against the debtor.

In the case of bankruptcy proceedings in relation to a natural person, all unpaid debt will survive. The debtor is personally and fully liable, even after bankruptcy proceedings have been concluded.

If bankruptcy proceedings take place in relation to a company, the company will automatically be dissolved as soon as the estate is formed. The right to subsequently make any additional legal claims against the company is thereby forfeited.

30 Distributions

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

Distributions are the normally the final stage of the administration of the bankruptcy estate. At this stage, all the assets of the debtor have been sold and all claims examined. The insolvency administrator prepares the final accounts concerning the administration of the bankruptcy estate and a dividend proposal.

The insolvency administrator calls for a meeting of creditors by publishing an advertisement in the Law Gazette two weeks before the final meeting of creditors. Draft accounts and dividend proposal must be available for inspection at the office of the insolvency administrator during those two weeks. The insolvency administrator then pays the dividend to the creditors if no creditor objects to the dividend proposal at the final meeting of creditors. It is uncommon that objections are made at this point since most matters of dispute have already been settled.

The insolvency administrator can make an on account distribution before the final stage of the administration if final distribution cannot take place due to unresolved issues, such as pending litigation.

In compositions (voluntary or compulsory), distributions are made according to the schedule agreed upon in the composition plan.

31 Transactions that may be annulled

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?

An administrator may request a retroactive termination of a transaction at undervalue. Three conditions have to be met for the administrator to be able to succeed in such request.

- the assets of the insolvent party have to be reduced by the transaction;
- the counterparty's assets have to have increased; and

- the insolvent party has to have the intention to sell at an under-value.

An administrator may request a retroactive termination of a payment of debt by the insolvent entity that has been made during the suspect period if the payment if it is unusual, for example if the debt was paid in other than cash; made sooner than could be expected, such as before the due date without any reasonable explanation; or the amount of the payment resulted in the insolvent party not being able to pay its debts at a due date, unless the payment would be deemed normal under the circumstances.

Any mortgage, liens or other security arrangements that creditors have acquired during the suspect period and were not created at the same time as the debt that they are related to, can be retroactively terminated.

The Insolvency Act also contains a general right of the administrator to retroactively terminate arrangements that discriminate against creditors; this provision is not subject to any suspect period.

The provisions on retroactive termination also apply to set-off if it was not authorised according to article 100 of the Insolvency Act. The rules for set-off, in relation to an insolvent party, are more stringent than the general set-off rules.

32 Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether a transaction by an insolvent debtor can be annulled? 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?

The period in which an insolvency administrator is authorised to retroactively terminate certain arrangements made by an insolvent party is the 'suspect period'. The suspect period is up to six months for deals with unrelated parties and up to two years for related parties. The time limit commences on the day when the petition for bankruptcy proceedings is filed in the relevant district court or the date on which the petition for moratorium or composition was filed if followed by the petition for bankruptcy within one month from that date. The suspect period runs backwards from that date.

The administrator initiates proceedings regarding invalidation of transactions. However, in the event that the administrator decides not to pursue any interests that the bankruptcy estate may enjoy, a creditor can pursue such interests in its own name for the benefit of the estate. The creditor bears the associated costs and risks itself but may ask the bankruptcy estate for a refund of costs to the extent to which the estate profits from such action.

If a transaction is retroactively terminated the party benefiting from the voidable transaction will usually have to pay the bankruptcy estate an amount that corresponds to the benefit obtained by the recipient of the payment from the bankrupt but which is not in excess of loss of the bankruptcy estate. Any profit that accrues after rescission proceedings are initiated shall be paid to the bankruptcy estate.

Transactions may only be challenged in a bankruptcy proceeding.

33 Directors and officers

Are corporate officers and directors liable for or can they be made to pay obligations owed by their corporations?

Officers and directors are, in general, not liable for obligations owed by their companies. The tax authorities may impose personal liability for unpaid taxes, pension fund contributions and VAT if the management has failed to pay such debts.

34 Duties of directors to creditors prior to bankruptcy

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?

If the Companies Act, Private Companies Act or the relevant company's articles of association have not been breached any liability would be based on the general rules of tort law on negligence. In general directors will not be made liable for debts of the company and or business decisions made in the ordinary course of business that fall within the company's purpose unless under special aggravating circumstances, for example where the director knew or should have known that the company could not fulfil the obligations it was undertaking at the time the transaction took place and that bankruptcy could not be avoided.

In recent court cases, directors have been acquitted even though the transactions they made on behalf of the company seemed bound to fail. From those cases the conclusion can be drawn that as long as the company is taking action to meet its financial difficulties and the directors believe that the company can be salvaged and the activities of the company are not contrary to good business practices the directors will not be held liable for pre-bankruptcy actions.

Directors can be made liable to pay losses incurred by third parties if the loss is due to a breach of the Companies Act, the Private Companies Act or a breach of the company's articles of association, provided there is a causal link between such breach and the losses incurred.

35 Creditors' enforcement

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?

There are no provisions in Icelandic law under which any assets belonging to a debtor can be seized by a creditor outside of court proceedings.

36 Corporate procedures

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

Under the Companies Act and the Private Companies Act, there are procedures for the dissolution of a company (voluntary winding-up). The application of these procedures requires that the company is solvent (able to pay all debts due). If the company is unable to meet this requirement, the company will be declared bankrupt under the provisions of the Bankruptcy Act.

The decision to wind up the company will be made at a shareholders' meeting. The shareholders appoint a liquidating committee and the committee assumes full control of the company. The assets of the company are liquidated into cash or receivables. The auditors of the company play a larger role than in bankruptcies as the company is required to hand in tax returns until the winding-up is concluded.

Regarding the assessment of the debts of the company, the liquidating committee will normally rely on the audited bookkeeping. The winding-up is concluded at a final shareholders' meeting that is held after all debts have been paid.

There are no provisions corresponding to the invalidation provisions in the Bankruptcy Act. Apart from that, voluntary winding-up bears many similarities to bankruptcy proceedings.

A private company may also be dissolved informally, provided that the shareholders of the company assume personal liability for all the debts of the company.

Update and trends

The global credit crunch affected the three major Icelandic banks so severely that the government and parliament intervened with the enactment of an Emergency Act on 6 October 2008, pursuant to which the banks were put under the control of specific Receivership Committees, which do not fall within the general insolvency regime of the Bankruptcy Act. By a decision of the Financial Supervisory Authority pursuant to the Emergency Act, new state-owned banking entities were formed, to which the bulk of domestic operations of the banks have been transferred. New provisions have since been added to the Act on Financial Institutions opening up the possibility for financial institutions to go into cessation of payments for up to two years and eliminating creditors' ability during the cessation

of payments not only to enforce claims or petition bankruptcy but also to commence legal action for their claims. This ring-fencing of financial institutions in cessation of payments from any legal action whatsoever goes far beyond the protection afforded by cessation of payments under the general regime of the Bankruptcy Act. The measure, considered as highly controversial, has the objective of providing distressed financial institutions the legal protection and leeway to reorganise and dispose of assets without too tight a time frame and creditor intervention. At the time of writing, there are still no indications as to whether or how this new legislation will be challenged in the Icelandic courts.

37 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

A final meeting of creditors is held following the insolvency administrator's advertisement in the Law Gazette. The insolvency administrator then pays the dividend to the creditors if no creditor objects to the dividend proposal at the final meeting of creditors.

The estate can be reopened in certain circumstances, for an example, if assets are found that were unknown to the insolvency administrator at the time the final meeting of creditors was held.

Compositions are finally concluded after distribution has been made according to the schedule in the composition.

38 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?

The adoption of the UNCITRAL Model Law is not under consideration in Iceland.

39 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 judgments?

Iceland has ratified the Nordic Convention on Insolvency. Under this convention, bankruptcies in Norway, Sweden, Finland and Denmark are recognised in Iceland.

Insolvency proceedings in other jurisdictions are not recognised in Iceland. Bankruptcy proceedings in another jurisdiction do not bar a creditor in Iceland from levying executions against assets situated in Iceland belonging to the foreign bankrupt entity. In order to take possession of assets situated in Iceland, the foreign administrator must initiate bankruptcy proceedings in Iceland. If this is not possible, the foreign administrator must initiate proceedings before the ordinary courts.

Foreign creditors are dealt with in basically the same way as national creditors. Claims in foreign currency are converted into Icelandic kronor using the exchange rate on the date of the passing of the bankruptcy order.

In bankruptcies, Icelandic law is always applied in the assessment of a security right or other similar right in assets situated in Iceland. In order to uphold the security right, the security must be deemed valid under Icelandic law. However, during a suspension of payment this does not apply. The security right is upheld if it is valid

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under the law that governs the relationship between the debtor and the creditor.

As regards the recognition of foreign judgments, Iceland has signed the following treaties:

- Nordic Convention No. 635 (15 September 1986), which includes Denmark, Finland, Norway and Sweden; and
- Lugano Convention (16 September 1988), which includes all EU countries, plus Switzerland, Norway and Finland.

Iceland therefore recognises judgments from all EU/EFTA countries regarding civil matters covered by the mentioned treaties, except for judgments that are against fundamental Icelandic principles of law.

40 Cross-border insolvency protocols and joint court hearings

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?

Iceland does not coordinate proceedings with courts in other countries, apart from the Nordic countries. Regarding the Nordic countries, Iceland has signed the Nordic Convention on Insolvency.

The European Council Regulation on Insolvency Proceedings is not binding in Iceland.

41 Pending legislation

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

A recent Emergency Act, enacted as a consequence of the global downturn in financial markets and its severe impact on the Icelandic banks, is affecting bankruptcy procedures regarding financial institutions.

A bill on the rescheduling of debts of individuals has been under construction in the Ministry of Commerce and is expected to be presented to parliament shortly.

Iceland	Applicable bankruptcy law, reorganisations: liquidations
	Bankruptcies, reorganisations and liquidations are essentially governed by the Icelandic Bankruptcy Act of 1991 as amended.
	Customary kinds of security devices on immoveables
	Mortgage (non-possessory charge), created by a deed of mortgage issued by the mortgagor.
	Customary kinds of security devices on moveables
	Mortgage (non-possessory charge) and a possessory charge.
	Stays of proceedings in reorganisations/liquidations
	Except as concerns financial undertakings in cessation of payments, reorganisations and liquidations do not entail a general stay of legal proceedings. Ongoing legal proceedings continue during reorganisations and bankruptcy estates assume the rights of obligations of a litigating bankrupt entity. New proceedings cannot be started against bankruptcy estates, whereas claims are filed within the claim filing period according to the Bankruptcy Act. Under recent legislation, legal action cannot be initiated against financial undertakings enjoying a cessation of payments protection.
	Duties of the insolvency administrator
	Safeguard the interests of all creditors. Ensure that all assets are collected, liquidated and paid out to creditors in accordance with the priority rules of the Bankruptcy Act.
	Set-off and post-filing credit
	Set-off permitted if creditor acquired claim at least three months prior to bankruptcy reference day, did not acquire its claim for sole purpose of set-off and did not know of insolvency. Post-filing credits rarely occur in bankruptcies. Debtor in cessation of payments may incur secured and unsecured debts, subject to assistant's consent. Such credits rank with priority if debtor is subsequently declared bankrupt.
	Filing claims and appeals
	Two months' claim filing period. Administrator's rejection of claim subject to appeal to District Court and ultimately to the Supreme Court.
	Priority claims
	Main priority claims are for delivery of assets belonging to a third party, priority cost incurred by the estate in the liquidation process, secured claims and priority claims such as salary and pension fund contributions.
	Major kinds of voidable transactions
Transactions at an undervalue; payment of debts during the suspect period if the payment (i) is unusual, eg. if the debt was paid in other than cash, (ii) is made before the due date without any reasonable explanation or (iii) resulted in the insolvent party not being able to pay his debts at a due date; security granted during suspect period for pre-existing debt.	
Operating and financing during reorganisations	
In case of cessation of payments, the debtor retains control of its assets and can continue operations, subject to the approval of the assistant of all material decisions. Provided such approval is given, the debtor may incur secured and unsecured debts and enter ordinary transactions.	
Requirements for approval of reorganisations	
Entry into cessation of payments as well as compulsory composition is subject to court approval. A dividend proposal in bankruptcy is subject to creditors' approval.	
Liabilities of directors and officers	
Officers and directors are, in general, not liable for obligations owed by their companies. The tax authorities may impose personal liability for unpaid taxes, pension fund contributions and VAT if the management has failed to pay such debts.	
Pending legislation	
A bill on the rescheduling of debts of individuals has been under construction in the Ministry of Commerce and is expected to be presented to Althingi (the parliament) shortly.	



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