Restructuring & Insolvency

in 53 jurisdictions worldwide

Contributing editor: Bruce Leonard

2012

Published by
Getting the Deal Through
in association with:

Andreas Neocleous & Co LLC
Bloomfield – Advocates & Solicitors
Bofill Mir & Alvarez Jana
Bowman Gilfillan
Cassels Brock & Blackwell LLP
Chancery Chambers
Charles Adams Ritchie & Duckworth
Clasis Law
Dundas & Wilson
Felsberg, Pedretti e Mannrich Advogados e Consultores Legais
Freshfields Bruckhaus Deringer LLP
Graham Thompson & Co
Headrick Rizik Alvarez & Fernández
Hoet Peláez Castillo & Duque
Jorge Avendaño & Forsyth Abogados
Kinstellar
Kleyr Grasso Associés
Law Firm Glimstedt
Lipman Karas
Logos Legal Services
Mamić Perić Reberski Rimac Law Firm
Motieka & Audzevicius
O'Melveny & Myers
Oscós Abogados
Osei-Ofei Swabi & Co
Patton Moreno & Asvat
Paul, Weiss, Rifkind, Wharton & Garrison LLP
PotamitisVekris
Qays H Zu'bi Attorneys & Legal Consultants
Rui Pena, Arnaut & Associados – Sociedade de Advogados RL
Sarie-Eldin & Partners
SCP Miriana Mircov Relicons SPRL
Setterwalls
SyCip Salazar Hernandez & Gatmaitan
Walder Wyss Ltd
Wardyński & Partners
Waselius & Wist
Weerawong, Chinnavat & Peangpanor Ltd
WongPartnership LLP
Yoon & Yang LLC
Zaid Ibrahim & Co

GETTING THE DEAL THROUGH®

Restructuring & Insolvency 2012

Contributing editor
Bruce Leonard
Cassels Brock & Blackwell LLP

Business development managers
Alan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers
Ellie Notley
Alice Hazard

Marketing assistants
William Bentley
Zosia Demkowicz

Subscriptions manager
Rachel Nurse
Subscriptions@GettingTheDealThrough.com

Assistant editor
Adam Myers

Editorial assistant
Lydia Gerges

Senior production editor
Jonathan Cowie

Chief subeditor
Jonathan Allen

Production editor
John Harris

Subeditors
Davet Hyland
Caroline Rawson

Editor-in-chief
Callum Campbell

Publisher
Richard Davey

Restructuring & Insolvency 2012
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

© Law Business Research Ltd 2011
No photocopying: copyright licences do not apply.

First published 1999
Thirteenth edition 2011
ISSN 1468-3180

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer–client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of December 2011, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law Business Research

CONTENTS

Global Overview James Watson *Freshfields Bruckhaus Deringer LLP* and Alan W Kornberg *Paul, Weiss, Rifkind, Wharton & Garrison LLP* 3

AFRICA

Botswana Kwadwo Osei-Ofei *Osei-Ofei Swabi & Co* 56
Nigeria Dayo Adu *Bloomfield – Advocates & Solicitors* 329
South Africa Claire van Zuylen *Bowman Gilfillan* 427

AMERICAS

Brazil Thomas Benes Felsberg and Paulo Fernando Campana Filho *Felsberg, Pedretti e Mannrich Advogados e Consultores Legais* 61
Canada E Bruce Leonard, David S Ward and Larry C Ellis *Cassels Brock & Blackwell LLP* 72
Chile Octavio Bofill, Jorge Lembeye and Edder Cifuentes *Bofill Mir & Alvarez Jana* 88
Mexico Darío U Oscós C and Darío A Oscós Rueda *Oscós Abogados* 309
Peru Guilhermo Auler and Michelle Barclay *Jorge Avendaño & Forsyth Abogados* 343
United States Alan W Kornberg and Claudia R Tobler *Paul, Weiss, Rifkind, Wharton & Garrison LLP* 480
Venezuela Carlos Dominguez *Hoet Peláez Castillo & Duque* 488

ASIA-PACIFIC

Australia Scott Foreman and Lucas Arnold *Lipman Karas* 4
China Melissa Thomas and Christian Zeppezauer *Freshfields Bruckhaus Deringer LLP* 96
India Sakate Khaitan, Sangeeta Jhunjhunwala and Mahrukh Umrigar *Clasis Law* 230
Japan Kazuki Okada, Takahiko Itoh and Mariko Inoue *Freshfields Bruckhaus Deringer* 253
Korea Sang Goo Han, Hyung Bae Park and Yoori Choi *Yoon & Yang LLC* 267
Malaysia Peh Lee Kheng, Khoo Kay Ping and Effendy bin Othman *Zaid Ibrahim & Co* 296
Philippines Ricardo Ma PG Ongkiko and Russel L Rodriguez *SyCip Salazar Hernandez & Gatmaitan* 351
Thailand Chinnawat Thongpakdee, Suntus Kirdsinsap and Bongkarn Jiraboonsri *Weerawong, Chinnavat & Peangpanor Ltd* 465

EUROPE AND MIDDLE EAST

Austria Friedrich Jergitsch, Michael Raninger and Florian Knotzer *Freshfields Bruckhaus Deringer LLP* 15
Bahrain Harnek S Shoker *Freshfields Bruckhaus Deringer LLP* and Grahame Nelson *Qays H Zu'bi Attorneys & Legal Consultants* 33
Belgium Charles-Antoine Leunen and Jan-Willem Geeroms *Freshfields Bruckhaus Deringer LLP* 45
Croatia Vladimir Mamić and Goran Jujnović Lučić *Mamić Perić Reberski Rimac Law Firm* 104
Cyprus Maria Kyriacou and Elias Neocleous *Andreas Neocleous & Co LLC* 110
Czech Republic Růžena Trojánková and Tomáš Osička *Kinstellar* 118
Egypt Motaz El-Dreny *Sarie-Eldin & Partners* 133
England & Wales Ken Baird, Anne Sharp, Victoria Cromwell and Kathryn Bruce *Freshfields Bruckhaus Deringer LLP* 140
Estonia Indrek Leppik, Martti Peetsalu and Olga Harlamova *Law Firm Glimstedt* 156
European Union Catherine Balmond, Victoria Cromwell and Wolf Harlfinger *Freshfields Bruckhaus Deringer LLP* 164
Finland Lauri Peltola and Timo Lehtimäki *Waselius & Wist* 175
France Alan Mason, Nicolas Morelli and Alexandra Szekely *Freshfields Bruckhaus Deringer LLP* 181
Germany Franz Aleth and Wolf Harlfinger *Freshfields Bruckhaus Deringer LLP* 190
Greece Stathis Potamitis, Ioannis Kontoulas and Eleana Nounou *PotamitisVekris* 204
Iceland Erlendur Gíslason, Ólafur Eiríksson, Heiðar Ásberg Atlason and Heiðar Örn Stefánsson *Logos Legal Services* 221
Italy Raffaele Lener and Giovanna Vigliotti *Freshfields Bruckhaus Deringer LLP* 239
Lithuania Emil Radzihovsky, Giedrius Kolesnikovas and Beata Kozubovska *Motieka & Audzevicius* 275
Luxembourg Marc Kleyr *Kleyr Grasso Associés* 285
Netherlands Michael Broeders and Thijs Flokstra *Freshfields Bruckhaus Deringer LLP* 319
Poland Michał Barłowski *Wardyński & Partners* 362
Portugal Nuno Pena, Joaquim Shearman de Macedo and Andreia Moreira *Rui Pena, Arnaut & Associados – Sociedade de Advogados RL* 374
Romania Lavinia Olivia Iancu *SCP Miriana Mircov Relicons SPRL* 384
Russia Dmitry Surikov, Maria Zaitseva and Svetlana Tolstoukhova *Freshfields Bruckhaus Deringer LLP* 393
Scotland Claire Massie *Dundas & Wilson* 406
Spain Eduard Arruga and Natalia Gómez *Freshfields Bruckhaus Deringer LLP* 437
Sweden Odd Swarting and Niklas Körling *Setterwalls* 446
Switzerland Christoph Stäubli *Walder Wyss Ltd* 453
United Arab Emirates Pervez Akhtar, Tarek El-Assra and William Coleman *Freshfields Bruckhaus Deringer LLP* 471

OFFSHORE

Bahamas Leif G Farquharson *Graham Thompson & Co* 24
Barbados Trevor Carmichael and Lauren McIntosh *Chancery Chambers* 40
Cayman Islands Graham F Ritchie QC and Rebecca Hume *Charles Adams Ritchie & Duckworth* 79
Dominican Republic Mary Fernández and Hipólito García *Headrick Rizik Alvarez & Fernández* 127
Hong Kong Mark Fairbairn, Ashley Bell and Bronwen May *O'Melveny & Myers* 213
Panama Ivette E Martínez S *Patton Moreno & Asvat* 335
Singapore Sean Yu Chou, Manoj Pillay Sandrasegara and Mark Choy *WongPartnership LLP* 420

Quick Reference Tables 495

Iceland

Erlendur Gíslason, Ólafur Eiríksson, Heiðar Ásberg Atlason and Heiðar Örn Stefánsson

Logos Legal Services

1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

Bankruptcies and reorganisations are 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. A specific Act No. 101 of 2010 governs the compulsory payment adjustment of individuals.

A specific winding-up regime designated for financial undertakings applies under the Act on Financial Undertakings No. 161/2002 pursuant to which an insolvent financial undertaking can become subject to one or all of the following proceedings:

- Interim Governing Board;
- Winding-up Board; and
- formal bankruptcy proceedings.

Financial undertakings are thus not subject to general bankruptcy proceedings, but the above three-tiered regime. To a large extent the provisions of the Bankruptcy Act apply to the winding-up of financial undertakings with some important exceptions provided for in the Act of 22 April 2009, such claims do not become automatically due upon the start of the winding-up procedure, and bank deposits rank in priority over other unsecured claims. 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 Public 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 general 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 so called Emergency Act of October 2008, special rules govern cessation of payments, composition and bankruptcy of financial undertakings, which cannot be made subject to normal bankruptcy proceedings. Chapter XII of the Act on Financial Undertakings applies to Financial Undertakings in distress and provides that they can:

- have an interim board appointed by the Financial Supervisory Authority to manage their affairs;
- enter cessation of payments;
- make a composition with creditors; or
- be wound up by a winding-up committee.

3 Secured lending and credit (immoveables)

What principal types of security are taken on immoveable (real) property?

Security rights on immoveable 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 principal types of security 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).

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 time and hand down a default judgment. 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 handed down 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 possible damage caused by a non-justified preliminary seizure, it is also mandatory for the creditor to file a confirmation action with the district court. The only special procedure applying to foreign creditors, provided their claims are substantiated in the manner described and 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?

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 commencing a voluntary liquidation and what are the effects?

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 a voluntary winding-up is under an obligation to file a petition for bankruptcy if the company is unable to pay 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 krona. 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 placing a debtor in involuntary liquidation and what are the effects?

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 the 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 krona 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 (see question 7).

9 Voluntary reorganisations

What are the requirements for a debtor commencing a financial reorganisation and what are the effects?

The reorganisation available under the Bankruptcy Act is cessation of payments and compulsory composition. Payment adjustment is a reorganisation measure available to individuals pursuant to Act No. 101 of 2010.

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 manage 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 commencing an involuntary reorganisation and what are the effects?

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

11 Mandatory commencement of insolvency proceedings

Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result?

Under company law, the winding-up committee of a company that is in a 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 time. Failure to meet these obligations may give rise to claims against the directors personally by creditors for their losses caused by such failure to file for bankruptcy in a timely manner.

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 undergoing 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 debtor or 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 disclaimer 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? In practice, does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

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 of 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 while the mortgagee can also avail itself of the authority to take possession of the mortgaged asset, if the mortgage agreement so provides.

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. Save for registered mortgages and statutory liens, if any, assets are sold 'free and clear' of claims out of a reorganisation or liquidation procedure, while most frequently a mortgagee would acquire the mortgaged asset rather than having the mortgage remain on the asset after it passes to a third party purchaser. Icelandic bankruptcy rules allow for 'stalking horse' bids in sale procedures provided the interim sale agreement is clearly made subject to the presentation of an improved bid. Icelandic bankruptcy rules do not permit credit bidding in sales.

15 Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may 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 creditors holding title to assets in the estate's possession (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 is arbitration used in insolvency proceedings? What limitations are there on the availability of arbitration in insolvency cases? 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 thought 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 acquiring the claim, 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 an IP licensor or owner 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 a licensor or owner and 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 would apply to agreements on the use of intellectual property rights. The licensor may require the estate to decide whether to honour an agreement without undue delay after having made such a request. If the debtor wishes to uphold the agreement and continue the use of the IP rights, the IP licensor can require the debtor to place a security for the continued and proper performance of its obligations. If no such security is placed, then the IP licensor can terminate the agreement.

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

May a debtor in a liquidation or reorganisation 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, 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 release non-debtor parties from liability, 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, subject to a minimum acceptance by no fewer 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 release non-debtor parties (officers, directors, advisers, lenders, etc) from liability. 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 if the debtor fails to perform a 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? How are meetings called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are insolvency administrators' reporting obligations? May creditors pursue the estate's remedies against third parties?

At the time of a bankruptcy ruling, the district court appoints an administrator or administrators who shall manage the bankruptcy estate. The administrator's main task 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. A period of two months must pass before the liquidation of property 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. The initial advertisement on the commencement of bankruptcy proceedings will include a call to the first creditors' meeting, which must be held within four weeks of the end of the two months' claims filing period. Subsequent meetings shall be called either by a public announcement In the Legal Gazette or by a notice to each individual creditor at the election of the administrator.

The administrator reports to the first creditors' meeting on the administration of the estate, its assets and the claims against it. If the estate is not closed within the year, the administrator shall prepare the estate's accounts at each year end and after each half-year period, which shall be available to the estate's creditors. Except for the initial creditors' meeting and final one to deal with the distribution of assets, if any, there are no mandatory creditors' meetings requirements, except for secured creditors' meetings.

There are no formal committees under the Bankruptcy Act. An 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 Creditor representation

What committees can be formed and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

Except for the mandatory secured creditors' committees, the Bankruptcy Act does not address the issue of creditors' committees, whereas creditors are free to form committees in order to represent them collectively. Such committees would be selected and appointed by the creditors' vote and have such powers and responsibilities as entrusted to them by the appointing creditors. A creditors' committee authority to retain advisers and how their expenses would be funded is not addressed in the Bankruptcy Act and would be subject to an agreement on the subject among the creditors.

25 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 pooled for distribution purposes? May assets be transferred from an administration in your country to an administration in another country?

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. The assets and liabilities of the companies may not be pooled for distribution purposes. The transfer of assets from an administration in Iceland to an administration in another country is only possible provided Iceland has entered into an international convention with such other state relating to the mutual assistance in insolvency matters. Article 6 of the Bankruptcy Act provides that the authorities can enter into such conventions with other states. To date, Iceland has only entered into such convention with the Scandinavian countries (Denmark, Finland, Norway and Sweden), dating back to 1934. Iceland has not signed or ratified the UNCITRAL Model Law on Cross-Border Insolvency.

26 Modifying creditors' rights

May the court change the rank 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.

27 Enforcement of estate's rights

If the insolvency administrator has no assets to pursue a claim, may the creditors 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 firstly to cover the costs of such creditor in pursuing the claim, and secondly to the estate for the benefit of all creditors.

28 Claims and appeals

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions on the transfer of claims? Must transfers be disclosed and are there any restrictions on transferred claims? Can claims for contingent or unliquidated amounts be recognised? How are the amounts of such claims determined?

A creditor must prove his or her claim against the debtor to the administrator in writing within a period specified in the advertisement of the bankruptcy process, which is normally two months. 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 krona shall be converted to krona 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 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. There is no explicit obligation to disclose transfers, whereas notice would have to be made before distribution to creditors at the latest to ensure that the dividend is paid to the transferee and proper owner of the claim.

Claims for contingent or unliquidated amounts (ie, where the amount of the claim is dependent on future events or is not a fixed amount) can be recognised. The bankruptcy administrator shall estimate the amounts of such claims and set aside funds for distribution towards such claims when the distribution of assets towards claims is determined. There is no fixed method prescribed by law for the determination of the amount of such claims, so the determination is subject to the administrator's discretion.

29 Priority claims

Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

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

Claims under articles 109 to 111 are the major privileged and priority claims, whereas claims under article 112 are employee-related claims:

- article 109: assets belonging to third parties are transferred to its rightful owner;
- article 110: priority costs:
  - funeral costs (in case of individuals);
  - expenses suffered by the insolvent estate (costs of administrator);
  - 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
  - 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 to 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 (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 (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 (i) 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 (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 (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; and
  (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;

30 Employment-related liabilities in restructurings

What employee claims arise where employees are terminated during a restructuring or liquidation? What are the procedures for termination?

Where employees are terminated during a restructuring or liquidation the same claims arise as in employment termination under normal circumstances, ie, a claim for severance payment for the period of the minimum termination notice. The procedure for termination is the same as under normal circumstances, that a notice of termination is sent in a verifiable manner to the relevant employees. The Act on

Collective Termination of Employment No. 63/2000 applies where a group of employees is made redundant at the same time. The act adds the specific procedural requirement of advance notice to, and consultation with, the relevant union representative and the regional labour agency in case the number of terminated employees exceeds certain escalating thresholds. The notice requirement does not apply when a business ceases operations by a court order, such as in the case of bankruptcy. Employee claims as a whole are not increased in relative terms where large numbers of employees are terminated or where the business ceases operations. Claims for deficiencies in pension plans have priority in liquidations and restructurings, except for exceptional contributions in excess of the legally prescribed minimum or if the pension contribution is not contingent upon a corresponding labour contribution of the employee.

31 Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

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.

32 Distributions

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

Distributions are 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.

33 Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? What is the result of a transaction being annulled?

Certain transactions listed below can be annulled or set aside in liquidations and following composition arrangements, whereas the setting-aside of transactions cannot be effected in reorganisations.

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 a 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 undervalue.

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 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.

34 Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a 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. This latter time limit has been temporarily extended to 48 months in avoidance actions that are commenced before the end of 2012. 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, if 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 that 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.

35 Directors and officers

Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

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.

If the Companies Act, Private Companies Act or the relevant company's articles of association have not been breached, any liability

Update and trends

A new article has been added to the Bankruptcy Act, broadening the possibilities for creditors to force a debtor into bankruptcy. According to the new article a creditor can petition bankruptcy if the debtor does not respond within three weeks to the creditor's demand that the debtor confirm in writing that it is able to pay the creditor's claim as and when it falls due, or within a short period of time if the claim is already due. Earlier, a creditor could only petition bankruptcy if the debtor had suffered in the preceding three months an unsuccessful claim enforcement or an unsuccessful pre-judgment attachment.

Following the collapse of the Icelandic commercial banks parliament enacted an amendment to the Bankruptcy Act extending the time during which a bankruptcy administrator can set aside voidable transactions made prior to the commencement of the bankruptcy. The amendment was challenged, inter alia on the grounds that it constituted unconstitutional legislation with retroactive effect, since it prolonged the period to set aside transactions that had taken place before the enactment. In a decree of 5 April 2011 the District Court of Reykjavík upheld the legality of the amendment.

On 19 July 2011, the Reykjavik District Court handed down an interesting judgment regarding the fate of claims which for some reason were not filed on time against a financial undertaking subject to winding-up proceedings. According to the judgment, non-filed claims in bankruptcy proceedings will be permanently forfeit only if the bankruptcy proceedings are completed by a distribution to creditors and the dissolution of the bankrupt entity. If the proceedings (bankruptcy or winding-up) end in the entity emerging as a going concern, eg, by entering into composition, the claims will 'come back to life', and are valid. The judgment is now subject to appeal to the Icelandic Supreme Court.

would be based on the general rules of tort law on negligence. General directors will not be made liable for debts of the company or business decisions made in the ordinary course of business that fall within the company's purpose, unless 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.

36 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.

37 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.

38 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

A final meeting of creditors is held following the insolvency administrators 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 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.

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? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

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 kronur 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. 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 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 and EFTA countries regarding civil matters covered by the mentioned treaties, except for judgments that are against fundamental Icelandic principles of law. The adoption of the UNCITRAL Model Law is not under consideration in Iceland.

40 Cross-border cooperation

Does your country's system allow cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings?

Article 6 of the Bankruptcy Act provides that the authorities can enter into conventions with other states for cooperation in insolvency-related matters such that a licence for payment suspension and composition granted in one state have automatic effect in another contracting state and that a bankruptcy proceeding in one contracting state includes property of the bankrupt in another contracting state. To date, Iceland has only entered into such a convention with the Scandinavian countries (Denmark, Finland, Norway and Sweden), dating back to 1934. Iceland has not signed or ratified the UNCITRAL Model Law on Cross-Border Insolvency.

41 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.

LOGOS

REYKJAVIK LONDON COPENHAGEN

Erlendur Gíslason **erlendur@logos.is**
Ólafur Eiríksson **oe@logos.is**

Efstaleiti 5
103 Reykjavík
Iceland
Tel: +354 5 400 300
Fax: +354 5 400 301

42 New Broad Street
London EC2M 1JD
United Kingdom
Tel: +44 20 7920 3020
Fax: +44 20 7920 3099

Lautrupsgade 7, 4th floor
2100 Copenhagen
Denmark
Tel: +45 70 229 224
Fax: +45 70 274 279

www.logos.is

Annual volumes published on:

- Air Transport
- Anti-Corruption Regulation
- Arbitration
- Banking Regulation
- Cartel Regulation
- Climate Regulation
- Construction
- Copyright
- Corporate Governance
- Corporate Immigration
- Dispute Resolution
- Dominance
- e-Commerce
- Electricity Regulation
- Enforcement of Foreign Judgments
- Environment
- Foreign Investment Review
- Franchise
- Gas Regulation
- Insurance & Reinsurance
- Intellectual Property & Antitrust
- Labour & Employment
- Licensing
- Life Sciences
- Merger Control
- Mergers & Acquisitions
- Mining
- Oil Regulation
- Patents
- Pharmaceutical Antitrust
- Private Antitrust Litigation
- Private Equity
- Product Liability
- Product Recall
- Project Finance
- Public Procurement
- Real Estate
- Restructuring & Insolvency
- Right of Publicity
- Securities Finance
- Shipping
- Tax on Inbound Investment
- Telecoms and Media
- Trademarks
- Vertical Agreements

For more information or to purchase books, please visit:
www.GettingTheDealThrough.com

The Official Research Partner of
the International Bar Association

Strategic research partners of
the ABA International section

ISSN 1468-3180