
A. INSOLVENCY PROCEEDINGS

1. *Give the names and a brief description of the main purpose and effect of the types of corporate insolvency proceedings that can be opened in your jurisdiction as:* 4A.001

- (a) *main proceedings (Annex A); and*
- (b) *secondary proceedings (Annex B).*

Are there any insolvency proceedings that do not fall into the above categories?

INTRODUCTION

1.1 Corporate insolvency in Bulgaria is almost entirely governed by Part IV of the Trade Act 1991 (the Trade Act).¹ Part IV was an entirely new part of the Trade Act which was adopted and entered into force in 1994. Since its original adoption, Part IV has been changed on numerous occasions. Major changes were made to it, for example, in 2003. They were aimed at speeding up the insolvency procedure. The changes to the Trade Act were those made in the summer of 2006. They were implemented with a view to improving the protection of the interests of the State and the employees of an insolvent debtor on insolvent liquidation. The most recent changes of June 2007 postponed the entry into force of the Commercial Register Act. The significance of this Act to insolvency proceedings is considered in section 23.1 of this chapter. 4A.002

1.2 The Bulgarian corporate insolvency procedure contained in Part IV of the Trade Act is an example of a **single-entry, multiple-exit insolvency procedure**, rated extremely highly for its sophistication by recent foreign investment reports.² Council Regulation (EC) No.1791/2006 of November 20, 2006 amends the Regulation by listing this single-entry procedure in both Annexes A and B for Bulgaria.

1.3 In this publication, unless specifically expressed otherwise, reference to a “company” includes reference to a general or a limited partnership and reference to a “member” or a “shareholder” of a company includes reference to a partner in a general partnership or a limited partnership.

¹ Due to differences in translations, this act is referred to differently in different publications. It has, for example, been referred to as The Law on Commerce, The Commercial Act, Commercial Code, The Trading Act, etc. but each of these references is to the same act.

² See, e.g. “Commercial Laws of Bulgaria”, and assessment of EBRD from December 2005 (www.ebrd.com/law).

MAIN PROCEEDINGS

4A.003 1.4 In Bulgaria, only the **Part IV Trade Act insolvency procedure** (*Част четвърта от Търговския закон—Несъстоятелност*) is listed in Annex A as a main proceeding under the Regulation.

1.5 The procedure always starts with the filing of a petition to the competent court for the commencement of the insolvency proceedings. How it will continue and end depends on whether or not the insolvent company has enough assets to cover the initial expenses of the procedure and whether, in the course of the insolvency procedure, a restructuring plan is proposed.

1.6 The possible **exit routes** of the procedure are as follows:

- (a) The insolvent debtor may be declared insolvent, its commercial activities terminated, all its assets attached and the winding-up procedure stayed for lack of assets to cover the initial expenses of the procedure (Art. 632 of the Trade Act). Where the debtor has insufficient assets to cover the initial expenses of the insolvency procedure, the court will invite the creditors (or other petitioners for insolvency) to fund those expenses. If they do so, the procedure will continue as described in para.(b) below. If they do not fund the expenses, the court will stay the insolvency proceedings. Within one year of the court staying proceedings, the proceedings may be continued where the debtor or a creditor provides funding of the initial expenses. If that does not happen, the court will close the insolvency proceedings and remove the debtor from the commercial register.
- (b) The insolvent debtor may be declared insolvent and the winding-up procedure commenced, followed by the appointment of a receiver and the ascertaining of the creditors and the assets of the insolvent debtor. This route is likely to continue in one of the following ways:
 - (i) a proposal to the court and approval by the court of a restructuring plan (Arts 696–709 of the Trade Act) (a **formal rescue**);
 - (ii) the realisation of the debtor's assets and the payment of the debtor's creditors in accordance with the priority provisions of the Trade Act (in cases where no restructuring plan has been proposed or the proposed plan has not been approved by the court) (Arts 710–739 of the Trade Act) (a **bankruptcy**); or
 - (iii) an out-of-court composition with all creditors (Arts 740–741a of the Trade Act), which could happen in all stages of the insolvency proceedings (an **informal rescue**).

In all cases, the court will hold a final decision formally closing the insolvency proceedings.

SECONDARY PROCEEDINGS

1.7 The **Part IV Trade Act insolvency procedure** (*Част четвърта от Търговския закон—Несъстоятелност*) is also listed in Annex B for Bulgaria as a secondary proceeding. It remains to be seen whether the only exit route that would be available as a secondary proceeding would be bankruptcy (rather than a formal or informal rescue) but, as there is a single-gateway procedure, this has been listed in both Annexes for Bulgaria. **4A.004**

PROCEEDINGS TO WHICH THE REGULATION DOES NOT APPLY

1.8 The Regulation only applies to “collective insolvency proceedings” (i.e. insolvency proceedings for the benefit of all the creditors), which must result in the partial or total divestment of the management powers of the debtor and the appointment of an insolvency officeholder. This means that the Regulation will not apply to: **4A.005**

- (a) any **informal out-of-court arrangements** between an insolvent debtor and some or all of its creditors where such arrangements are not entered into while insolvency proceedings under Part IV of the Trade Act have been commenced. Even if such arrangements were collective (in the sense that they were for the benefit of all creditors), they would be entered into informally and would be governed by contract, rather than insolvency law. If the debtor failed to live up to its promises to the creditors, the creditors would have only contractual remedies against the debtor. However, such arrangements, in case of being concluded by some, not all, of the existing creditors, and if being detrimental to the rest of the creditors may be declared null and void under the insolvency provisions of the Trade Act (see paragraphs 13.1–13.5 below).
- (b) a **voluntary solvent liquidation** of the company or partnership. The company’s shareholders or the partnership’s partners may decide to wind up the company or the partnership on a voluntary basis. Provisions to this effect are contained in relation to each type of partnership or company in Part I of the Trade Act. It is a condition of commencing such proceedings that the company or partnership is solvent. If the liquidator appointed in a solvent liquidation discovers that the company is in fact insolvent, the liquidator is required to file a petition for the commencement of formal insolvency proceedings under Part IV of the Trade Act (s.626(2) of the Trade Act);
- (c) a **forced court liquidation on public policy grounds**, such as illegality of activities of the company or the partnership, the request of the minority shareholders or partners for winding up in exceptional circumstances, no appointed management for a certain period of time, etc. Provisions to this effect are contained in relation to each type of partnership or company in Part I of the Trade Act. In this case, if the company is solvent it will enter into a forced solvent liquidation rather than into insolvency proceedings; and
- (d) the **enforcement of security** by a secured creditor. In Bulgaria, mortgages and possessory pledges are enforced through a court foreclosure procedure which

requires the sale of the secured assets through a public auction supervised by a state or private court enforcement officer. Commercial possessory pledges and registered pledges may be enforced through an out-of-court foreclosure procedure under which the secured creditor may sell the secured assets by private contract without the involvement of a court enforcement officer (provided certain conditions are met). These procedures are by their nature non-collective in that they aim at satisfying a single secured creditor.

TYPES OF COMPANIES

4A.006 2. *Are these proceedings available for all companies or are there special regimes for small companies, financial institutions, insurance companies or any other types of companies?*

2.1 The insolvency procedure contained in Part IV of the Trade Act does not apply to public enterprises which exercise a state monopoly or have been established under a special act of Parliament. The insolvency regimes in respect of these entities are contained in the special legislation establishing these entities or granting them the right to exercise state monopoly. Further, the Part IV procedure does not apply to banks and insurance companies. The insolvency regime for these types of entities is contained in the Bank Insolvency Act 2002¹ and the Insurance Code 2006² respectively. Special rules for insolvency proceedings in regard to supplementary social insurance companies are also set out in the Social Insurance Code.³

2.2 It is highly unlikely that a company which exercises a state monopoly or which has been established under a special act of Parliament will be involved in any cross-border insolvency proceedings, and since the Regulation does not cover the insolvency of insurance undertakings and credit institutions, the special regimes outlined in paragraph 2.1 above have not been listed in Annex A or Annex B of the Regulation.

¹ English translation of the statutory text is available on the website of the Bulgarian National Bank (www.bnb.bg) under "Legal Framework" (see "Law on Bank Bankruptcy").

² English translation of the statutory text is available on the website of the Bulgarian Financial Supervision Commission (www.fsc.bg) under "Legal Framework" (see "Insurance Code").

³ English translation of the statutory text is available on the website of the Bulgarian Financial Supervision Commission (www.fsc.bg) under "Legal Framework" (see "Social Insurance Code").

COMMENCEMENT OF PROCEEDINGS

3. Who can initiate the insolvency proceedings referred to above and how (briefly) are such proceedings initiated? What are the conditions for initiating each type of insolvency proceeding? 4A.007

3.1 Insolvency proceedings under Part IV of the Trade Act are commenced by the filing of a petition in writing to the court. The petition can be filed by the company (acting through its management), by the liquidator of the company (where the company is already in solvent liquidation) or by a creditor under a commercial transaction of the company. Where the company has defaulted under a public (state or municipal) obligation related to its commercial activities or under a purely commercial obligation to the State, the State Receivables Agency can also file a petition.

3.2 Together with its petition to the court the petitioner must present additional documentation prescribed in s.628 of the Trade Act:

- (a) The company or, if it is already in solvent liquidation, its liquidator must furnish:
 - (i) a copy of the last audited annual accounts of the company;
 - (ii) a list of the assets and liabilities of the company together with their values as of the date of the petition;
 - (iii) a list of the creditors of the company, specifying the amount of their claims and the securities held in connection with their claims; and
 - (iv) an inventory of the personal properties and the properties that are joint matrimonial property where the petitioner is a sole proprietor or partner with unlimited liability.
- (b) A creditor, by contrast, needs only to present any documentary evidence in its possession which shows that the company is insolvent.
- (c) In the case of a petition by either the company or a creditor, evidence must also be provided to show that the National Revenue Agency and the State Receivables Agency have been informed (prior to the filing of the insolvency petition) of the petitioner's intention to petition for insolvency proceedings.
- (d) In the case of a petition by either the company or a creditor, a corporate restructuring plan and the name of a proposed interim receiver may also be provided.

3.3 Except for the documents referred to in paragraphs 3.2(c) and (d) above, the documents and evidence required to be presented to the court (together with the petition) are designed to enable the court to adjudicate on the question of whether or not the company is insolvent. Insolvency for these purposes means that the company:

- (a) is unable to perform a matured monetary obligation due under a commercial transaction;
- (b) is unable to perform a public (state or municipal) obligation related to its commercial activities or a purely commercial obligation to the State; or
- (c) is over-indebted (meaning that the assets of the company are less than its monetary obligations).

3.4 Insolvency is evident when the creditor is unable to perform a monetary obligation under a commercial transaction or a debt to the State or Municipality, related to its commercial activities. Insolvency is presumed where the debtor has ceased making payments to its creditors. Performance to some of the creditors may not exclude insolvency where objectively the debtor is unable to make payments on the due dates to all of them.

3.5 Commencing insolvency proceedings can sometimes be difficult, not because of the documents or other evidence that has to be filed with the petition but rather because of the established court practice in Bulgaria for the court to seek to ascertain that a petitioning creditor is a **real creditor**, i.e. that his claim is not disputed by the debtor. A debtor could seek to take advantage of this practice; if the debtor were to object to the existence or the amount of the claim of the petitioning creditor, the court would refuse to commence the insolvency proceedings. As it is not required by the current provisions of the Trade Act that the claim of a petitioning creditor is undisputable, it is to be hoped that the Bulgarian Supreme Court of Cassation will issue guidelines with a view to changing the established court practice.

3.6 Finally, it should be noted that, before the court will open the insolvency procedure, it must be satisfied that the debtor has enough cash to cover the initial expenses of the insolvency procedure. Where that is not the case, the court will request the creditor(s) or other petitioner(s) to fund the initial expenses. If they decide to fund the initial expenses, they will recover them later (i.e. immediately after the receiver has managed to collect or claw-back some assets into the estate of the insolvent debtor). If the initial expenses are funded, the procedure will continue in the usual way. If the creditors or other petitioner fail to provide the funding, the court will: declare the insolvency of the debtor; declare the initial date of insolvency; order the suspension of the commercial activities of the debtor; order the attachment of all of its assets; and stay the insolvency procedure (Art.632 of the Trade Act). Within one year of the court staying the procedure, it may be revived where the debtor, a creditor or another petitioner is willing to provide funding of the initial expenses. If that does not happen, the court will close the insolvency proceedings and will remove the debtor from the commercial register (in which case, all creditors' claims will be discharged).

MANAGEMENT OF DEBTOR

4. *How does the initiation of proceedings affect the management and day-to-day control of the business of the company and who chooses the insolvency office holder? Who usually takes appointments as the insolvency office holder?* 4A.008

4.1 The court decision to open insolvency proceedings under Part IV of the Trade Act does not automatically take away the management powers of the debtor. The debtor will continue its commercial activities under the supervision of a receiver, even though it will only be able to enter into new contracts with the prior consent of the receiver. However, if, in the court's opinion, the debtor is likely to endanger the interests of the creditors, the court will vest the right to manage and sell the assets of the debtor in the receiver (Art.635 of the Trade Act). Therefore the debtor's management will continue to be able to take part in the insolvency proceedings (either personally or through a representative) unless the court has specifically empowered the receiver to take over the management.

4.2 It is important to note that, from the formal opening of the insolvency proceedings, only the receiver is empowered to receive any payments or the benefit of the performance of other obligations due to the debtor (Art.636(1) of the Trade Act).

4.3 The receiver is appointed and removed by the court. In the initial phase of the proceedings (i.e. from the decision opening the insolvency procedure) an interim receiver is appointed at the discretion of the court. Every subsequent receiver is elected by the meeting of the creditors and afterwards appointed by the court (see paragraph 4.5 below). There is now a set of legal requirements designed to ensure that a receiver is well-qualified to supervise and manage the activities of the debtor and to perform the rest of his duties as receiver. Under Art.655 of the Trade Act, a receiver must be a natural person (as opposed to a legal person). He or she must have university education in economics or law and at least three years post-qualification experience in their respective field. They must also go through a receivership qualification course and appear on the register of receivers kept by the Ministry of Justice in Bulgaria. Because of these requirements and the nature of the duties of the receiver, mostly lawyers, bankers and accountants tend to be appointed as receivers.

4.4 The creditors of the insolvent debtor play an important role in the insolvency procedure.

- (a) With its formal decision to open the insolvency procedure, the court will appoint a day for the first meeting of the creditors. Creditors whose claims are evidenced by the commercial books of the debtor will be entitled to attend and vote at this meeting. Decisions are taken by simple majority of the value of the claims. The first creditors' meeting will hear the report of any interim receiver previously appointed and will propose one or more persons to the

court to be appointed as permanent receiver(s). The meeting might also appoint a creditors' committee.

- (b) The creditors' committee is a facultative body of the creditors and its duties are to assist and control the management activities of the receiver. If the receiver fails to perform his duties properly, the committee might prompt the court to replace the receiver. The committee will also supervise the commercial activities of the debtor, the books and the cash of the debtor and might recommend the limitation of the management powers of the debtor.
- (c) Subsequent creditors' meetings will supervise the activities of the appointed receiver, might discharge the receiver and propose to the court the appointment of another receiver; the creditors' meetings will also take some important decisions such as the procedure and method for realising the debtor's assets, the method of valuing the assets and who should be the valuer, etc. In general, only creditors whose claims have been admitted in the insolvency proceedings will be entitled to attend and vote in the subsequent creditors' meetings.
- (d) Should a restructuring plan be proposed in the course of the insolvency proceedings, the creditors will usually appoint a creditors' representative body to supervise the implementation of the plan.
- (e) Where a restructuring plan is not proposed but the insolvency proceedings instead involve the realisation and distribution of the debtor's assets, the court will call a final creditors' meeting to approve the results of the proceedings before issuing its decision to close the insolvency proceedings and to remove the debtor from the commercial register.

4.5 The court will take an active role at every stage of the insolvency proceedings. Because of the broad powers of the court, the Trade Act has previously been criticised by some practitioners as putting the court into a "baby-sitting" position vis-à-vis the creditors. This position has been partially alleviated by the changes to the legislation in 2003 and 2006. Under the revised law, the court will:

- (a) formally open and close the insolvency proceedings;
- (b) determine the consequences arising from the opening of the insolvency proceedings (e.g. whether the receiver is to take over the management of the commercial activities of the debtor);
- (c) call the creditors' meetings and preside over them;
- (d) appoint and remove the receiver;
- (e) approve the list of creditors whose claims are admitted in the insolvency proceedings by the receiver and hear submissions from creditors whose claims are not admitted;
- (f) sanction a formal restructuring plan; and

(g) approve the final distribution of the debtor's estate amongst the creditors.

4.6 Departing from the general principles of civil process, the court may also, on its own initiative, investigate the facts and collect evidence relevant to its decisions and orders.

ASSETS AND THE INSOLVENT ESTATE

5. *What assets form part of the insolvent estate?*

4A.009

5.1 Generally the bankruptcy estate includes all the assets of the company, existing at the day of the court's decision to open bankruptcy proceedings.

5.2 As a matter of Bulgarian insolvency law, assets inside and outside of the jurisdiction will form part of the insolvent estate (Art.614 of the Trade Act speaks broadly of "assets of the debtor").

5.3 Certain assets subject to the transactions referred to in paragraph 13.3 which at the time of the court's opening of bankruptcy proceedings do not belong to the company may be successfully clawed back and thus form part of the bankruptcy estate.

5.4 Legal title to the assets remains vested in the company. Where the management and disposal powers in respect of the assets are vested in the receiver by the court, he merely acts as an agent for the company.

5.5 Assets acquired by the debtor after the commencement of the insolvency proceedings ("after-acquired assets") will also form part of the insolvent estate (Art.614(2) of the Trade Act).

5.6 Secured assets and assets over which a right of lien¹ is being exercised form part of the insolvent estate, and the receiver can take possession of them in order to sell them later in the insolvency process. However, a secured creditor or creditor exercising its right of lien will keep their rights *in rem* against the secured asset(s) (s.618(1) of the Trade Act) (although see section 6 below regarding the impact of the insolvency proceedings on the secured creditor's right to enforce its security).

5.7 If the debtor is a tenant under a lease, the property leased will still belong to the landlord and would not form part of the insolvent estate.

¹ In the ordinary course of business, a commercial creditor with a matured claim under a commercial transaction will have a commercial right of lien over the goods and commercial papers received legally by it in the course of the transaction until the creditor is fully paid. Once the insolvency procedure commences the creditor will in addition have a right of lien to secure its non-matured claims under the transaction (Art.315 of the Trade Act).

5.8 The concept of “retention of title” on sale of goods is known to the general Bulgarian law of obligations contained in the Obligations and Contracts Act 1950. Article 205 of the 1950 Act provides that the sale of movable goods with retention of title is valid against the creditors of the buyer if the sale was entered into in writing and had an authentic date. On this basis, it could be argued that movable goods sold to the insolvent debtor under a “retention of title” clause in writing and with an authentic date should not be included in the insolvent estate. Should such goods, however, be included in the estate and subsequently sold, the buyer of such goods will acquire them with good title, while the previous owner will have an immediate claim against all the proceeds of sale, which he could request from the hands of the creditors of the insolvent estate (Art.717k of the Trade Act).

5.9 There are certain limited provisions relating to fiduciary relationships in Bulgaria but the courts are unlikely to recognise a fully fledged trust. Therefore, where the insolvent debtor holds certain property as a trustee (in accordance with a trust governed by a foreign law), such property will be included in the insolvent estate.

EFFECTS OF PROCEEDINGS ON CREDITOR ACTION

4A.010 6. *What is the effect of the initiation of proceedings on the following:*

- (a) existing contracts; and*
 - (b) creditor action generally?*
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6.1 The commencement of insolvency proceedings does not automatically terminate existing contracts, although certain actions performed under those contracts will be invalid against the creditors of the insolvent debtor. For instance, after the date of the court’s decision to commence insolvency proceedings, a monetary obligation owed to the insolvent debtor must be paid to the receiver. It may only validly be paid to the debtor if the counterparty did not know of the commencement of the proceedings (Art.636(2) of the Trade Act). There are also rules about what debts a creditor may validly set off against debts owed by him to the debtor (see section 14 below).

6.2 A contract may provide for its termination where one of the parties becomes insolvent or enters into insolvency proceedings. However, such an arrangement would be governed by contract law rather than by insolvency law.

6.3 In the course of the winding up of the debtor, the receiver may terminate any existing contract to which the insolvent debtor is a party unless the contract has already been fully or partially performed by any of the parties to it. The receiver must, however, give 15 days’ notice of the termination to the counterparty and compensate it for any damage suffered as a result of the termination (Art.644 of the Trade Act).

6.4 The commencement of the insolvency proceedings stays all court and arbitration proceedings against the debtor (other than employment disputes on monetary claims). There is an exception to this rule where, at the time of the commencement of the insolvency proceedings, the insolvent debtor has filed a counterclaim or set-off claim in the proceedings (Art.637 of the Trade Act).

6.5 The commencement of the insolvency proceedings also stays all individual enforcement actions against assets of the insolvency estate. An exception to this rule is contained in Art.193 of the Tax and Social Security Procedure Code: according to this Article, property which has already been secured for public liabilities or against which enforcement action has been taken for the collection of public liabilities before the beginning of insolvency proceedings shall be sold by a public enforcement agent, subject to the procedure and conditions of this Code. If the funds received following the sale of that property do not fully cover the debt concerned, along with the accumulated interest and public enforcement costs, the state or the municipality shall be satisfied for the remaining amount, following the general procedures. If the funds received following the sale of the property exceed the debt, along with the accumulated interest and public enforcement costs, the public enforcement agent shall transfer the remaining amount to the account of the insolvency estate.

6.6 The commencement of insolvency proceedings also stays individual enforcement actions by secured creditors against the secured assets of the debtor. However, if the secured assets are already in the process of being sold by the secured creditor and, in the opinion of the court, the secured creditor's interests might otherwise be prejudiced, the court may allow the enforcement action to continue (Arts 638 (1) and (3) of the Trade Act). The Register Pledges Act and the Financial Collateral Agreements Act provide that the commencement of insolvency proceedings shall not impact any proceedings which have begun under these acts; therefore such secured creditors may enjoy out-of-court enforcement of their rights.

RANKING OF CLAIMS – PRIORITY

7. Are the claims of any classes of creditor given priority status in the insolvency proceedings? 4A.011

7.1 Certain claims have priority status in the Part IV Trade Act insolvency procedure (Art.722(1) of the Trade Act). They are satisfied ahead of all other claims on the final distribution of the insolvent estate. In descending order of priority, those are claims in relation to:

- (a) debts secured by **registered commercial charges** or under the Financial Collateral Agreements Act (those claims have priority only in relation to the proceeds of sale of the secured assets)¹;

- (b) debts for which the creditor is exercising a **right of lien** (those claims have priority only in relation to the proceeds of sale of the assets over which the right of lien is being exercised);
- (c) the **expenses** of the insolvency procedure (including court fees paid or due, disbursements for expert witnesses, the receiver's fees which are determined by the creditors' meetings or, in certain circumstances specified by law, by the court and amounts due to employees as a result of the debtor continuing its business etc.). As referred to above, however, the initial expenses of the insolvency procedure funded by the creditors will be recovered as soon as the estate has sufficient assets to cover these expenses; the creditors will not have to wait to recover these monies until the final distribution (see 3.6 above);
- (d) debts arising from **employment relations** existing before the date of the court's decision to open insolvency proceedings;
- (e) **statutory alimentation** owed by the debtor to third parties;
- (f) **public debts** (such as taxes, duties, social insurance contributions, etc.), existing before the date of the court's decision to open insolvency proceedings;
- (g) **debts coming into existence after the date of the court's decision to open insolvency proceedings** and unpaid on their maturity date (other than amounts due to employees in respect of that period); and
- (h) **unsecured debts** existing before the date of the court's decision to open insolvency proceedings other than those of subordinated creditors, mentioned in 8.1 below.

RANKING OF CLAIMS – SUBORDINATION

4A.012 8. *Are the claims of any classes of creditor subordinated in the insolvency proceedings?*

8.1 Article 616(2) of the Trade Act provides for several categories of subordinated creditors in the insolvency proceedings; such creditors will only recover their claims after the creditors referred to in paragraph 7.1 above have been paid in full. In descending order of priority, the subordinated claims are those in relation to:

- (a) statutory or contractual interest accruing on unsecured debts after the date of the commencement of the insolvency proceedings;
- (b) loans provided to the insolvent company by its shareholders;
- (c) gratuitous transactions; and

¹ The Financial Collateral Agreements Act provides for two types of financial collateral agreement—either by transfer of title or by creating a security. In case of transfer of title the secured claim will rank ahead of those debts referred to in para.7.1.(a).

- (d) expenses incurred by creditors of the insolvent company in relation to their own participation in the insolvency procedure.

8.2 The Trade Act does not contain provisions regarding contractual subordination of creditors' claims. Therefore, it seems unlikely that the courts would recognise such subordination.

FILING CLAIMS – FOREIGN CREDITORS

9. Are there any special rules for the filing of claims by creditors domiciled or incorporated outside your jurisdiction? 4A.013

In addition to observing the requirements set out for domestic creditors, foreign creditors also have to state an address in Bulgaria for service of notice of court proceedings. This is important because, if such an address is not stated, the notice of proceedings to the relevant foreign creditor will be filed with the commercial register and that creditor will be deemed properly notified of the proceedings. There are no special rules for the filing of claims by foreign creditors.

FILING CLAIMS – PROCEDURE

10. In very broad terms, what is the procedure for the filing, verification and admission of creditor claims? 4A.014

10.1 All creditors must file their claims in writing with the insolvency court. Claims must be filed within one month from the date of registration of the court's decision to open insolvency proceedings in the commercial register. The creditors must state the basis and amount of their claims, their securities and priorities, an address for the service of process in the jurisdiction and must enclose any documentary evidence supporting their claims (Art.685 of the Trade Act).

10.2 Within seven days from the end of the period for the filing of claims by the creditors, the receiver will make several lists of claims, i.e.:

- (a) a list of the claims which he admits;
- (b) a list of the claims which he rejects; and
- (c) a list of the claims which must be admitted *ex officio* (i.e. claims arising out of an employment relationship with the insolvent debtor and public debts not subject to further appeal—s.686 of the Trade Act);

10.3 The lists prepared by the receiver are then made public by notice in the commercial register and by leaving copies of them with the court's administration. The debtor or one of its creditors may file with the court a written objection to a list within seven days of the lists having been made public. The receiver must also file with the

court its position in relation to such an objection. Having reviewed any objections, the court will approve the lists, amending them as it sees fit. The approval of the court is published in the commercial register and is subject to no further appeal. However, a creditor who has filed an objection against a list may commence proceedings to prove its objection before another panel of the court (Art.694 of the Trade Act). The decision reached by the other panel is subject to one (if the amount of the claim is up to BGN 25,000) or two further stages of appeal but when those are exhausted the final decision must be honoured in the original insolvency proceedings.

10.4 Claims can be filed with the court as “additional claims” and accepted in the usual way by the court for two further months after the expiry of the initial one-month period for filing claims. Creditors whose claims existed at the time of the opening of the insolvency procedure will not be able to file them after the expiry of this additional period and will eventually lose those claims. Creditors with additional claims that have been admitted by the receiver later on in the process will be at a disadvantage only to the extent that they cannot contest any claim which has already been admitted by the receiver nor any distribution which has already taken place (Arts 688 (1) and (2) of the Trade Act).

10.5 The receiver must include as “additional claims” in the process claims arising after the commencement of the insolvency proceedings and unpaid on their maturity date (Art.688(3) of the Trade Act).

COSTS OF PROCEEDINGS

4A.015 11. Who bears the costs of the insolvency proceedings? In your experience, and generally speaking, do the costs of the proceedings tend to be high?

11.1 Where the debtor has filed for the commencement of the insolvency procedure, court fees are not collected in advance. They are collected with priority upon the distribution of the insolvent estate (see paragraph 7.1(c) above). By contrast, where a creditor has filed for the commencement of the insolvency procedure, it must pay the court fees in advance but may recover these upon the distribution of the insolvent estate with priority (see paragraph 7.1(c) above). The court fee for the process in front of the district court (as a court of first instance) is a flat fee, currently BGN 150 (approximately EUR 75). The court fee for any appeal in the insolvency procedure (either to the Supreme Court of Cassation or to a Court of Appeal) is also a flat fee, currently half of the fee for the district court.

11.2 The expenses of the insolvency proceedings under Part IV of the Trade Act are borne by the insolvent estate (Art.620(3) of the Trade Act). As referred to above, where the estate does not have sufficient assets to cover the initial expenses of the insolvency procedure, the court will request the creditor(s) or other petitioner(s) to fund the initial expenses. If they decide to fund the initial expenses, they will recover

them later (i.e. when the receiver has managed to collect or claw back some assets into the estate of the insolvent debtor). Further expenses of the insolvency procedure funded by a creditor (e.g. for expert witnesses) will be recovered upon the distribution of the insolvent estate with priority (see paragraph 7.1(c) above). It must be noted, however, that a creditor can only recover the costs of its own participation in the insolvency proceedings (e.g. travel expenses, legal fees) after satisfaction of all other creditor claims (see paragraph 8.1 above).

11.3 It should be noted that a creditor who has started separate proceedings to prove its objection to the lists of claims approved by the court is not required to pay court fees in advance. Such a creditor is required to pay the fees only where its objection has been dismissed (Art.694 of the Trade Act).

11.4 Where a restructuring plan has been proposed in the insolvency procedure, the debtor must pay the court fees and the other expenses incurred in the insolvency procedure, including those incurred by the creditors until that point (Art.620(5) of the Trade Act).

11.5 The amount of expenses in insolvency proceedings differs from one case to another. It generally depends on many factors such as the type of the debtor, the amount of the insolvency estate, the difficulties in cashing the assets, the number of claims of creditors, the duration of the procedure, etc. Therefore there is no definite answer to the question of whether the insolvency procedure is expensive or not.

EFFECTS OF THE CLOSURE OF THE PROCEEDINGS

12. *What is the effect of the closure of the insolvency proceedings? In particular:* 4A.016

- (a) *Does this have the effect of discharging the debtor's liabilities?*
- (b) *What tends to happen to the company at the end of the insolvency proceedings?*
- (c) *On average, how long do the insolvency proceedings tend to take?*

12.1 Creditors whose claims existed at the time of the opening of the insolvency procedure must file them with the court within the relevant time periods (see paragraphs 10.3 and 10.4 above). Failure to do so will discharge their claims (Art.793(1) of the Trade Act).

12.2 Creditors whose claims have been filed within the applicable time limits and have been admitted in the insolvency procedure might also face the partial or full discharge of their claims. This could happen where:

- (a) the assets in the insolvency estate are insufficient to satisfy a creditor in part or in full on a final distribution or on any additional distributions taking place

within one year from the closing of the insolvency proceedings (Arts 793(2) and 744 of the Trade Act); or

- (b) as a result of the creditors adopting a formal or an out-of-court restructuring plan in which some or all claims have been reduced or discharged.

Informal rescue

4A.017 12.3 All creditors must agree to an out-of-court restructuring plan put together within the context of the insolvency procedure. Therefore, any individual creditor which is not happy with having its claim reduced or discharged would be able to block such a plan. The agreement must be executed in writing by all creditors that have recognised claims, which means that it can only be agreed once the court has confirmed the final list of creditors with admitted claims.

12.4 An out-of-court plan may establish different conditions from those originally agreed between the debtor and the creditors, or vary the amounts due or the relevant payment terms. Upon execution of the plan, the insolvency procedure is terminated. If the debtor fails to perform its obligations under the plan, the insolvency procedure may be resumed by creditors with claims representing at least 15 per cent of the total amount of admitted claims.

Formal rescue

4A.018 12.5 By contrast, a formal restructuring plan must be approved by the requisite majority of each class of creditors (referred to below) and then by the court. The restructuring plan may be proposed and prepared by the debtor; the receiver; creditors owed at least one-third of the secured claims; creditors owed at least one-third of the unsecured claims; shareholders holding at least one-third of the share capital; any unlimited liability shareholder; or at least 20 per cent of the debtor's employees.

12.6 The plan may provide for the restructuring of the debtor's enterprise, the transfer of all or part of its assets of business to another entity; the extension of payment dates; the waiver or discharge of obligations (in whole or in part) or a debt to equity conversion. The plan may also provide for the appointment of a supervisory body to exercise control over the debtor's activities while the plan is implemented.

12.7 To safeguard the interests of the creditors, the legislation provides that:

- (a) the creditors who are to vote on the plan are divided into five classes¹ and take decisions by a simple majority in value of the claims in each class (secured

¹ These being: (a) secured creditors and creditors with rights of retention; (b) employees with employment claims that arose prior to the commencement of the insolvency procedure; (c) the State in respect of taxes, duties, fees and social security contributions that arose prior to the commencement of the insolvency procedure; (d) unsecured creditors; and (e) subordinated creditors as listed in section 8 above.

creditors and creditors exercising rights of lien form a separate class). Though the decisions of each creditors' class may be in favour of the plan, it is only considered adopted if creditors whose debts form more than half of all the claims admitted in the proceedings have voted for it;

- (b) the plan must also be approved by creditors holding more than half of the value of all claims;
- (c) no creditor can be put in a less favourable position than the position of other creditors in its class, unless the affected creditor consents to the opposite in writing;
- (d) if a creditor objects to the plan, the plan must provide that that creditor will receive as much as it would have received in a final distribution of the insolvent estate through the insolvency procedure; and
- (e) no creditor can receive more than its original claim.

The court will check whether these safeguards (amongst others) have been observed before it will approve the plan. Once the court has approved the plan, the insolvency procedure will be terminated so long as the debtor performs its obligations under the plan. If the debtor fails to perform its obligations, the insolvency procedure may be resumed at the request of creditors representing at least 15 per cent of the total claims or at the request of the supervisory body.

General comments

12.8 Where a formal or out-of-court restructuring plan has been approved as part of the insolvency procedure, upon the closure of the insolvency procedure, the company's management and members will re-acquire control over the company. **4A.019**

12.9 Where the insolvency procedure has involved the realisation of the assets and the distribution of the insolvent estate to the creditors, the company will remain in existence only if after paying all the creditors in full the company still has assets left over. This will rarely be the case and, in most cases, after the final distribution, the company will be dissolved and removed from the commercial register (Art.735(2) of the Trade Act).

12.10 The changes to Part IV of the Trade Act in 2003 were aimed at expediting the insolvency procedure. Almost all time periods in respect of the insolvency procedure were halved. Theoretically, insolvency proceedings should now last from a year to a year and a half. However, in practice, the length of the procedure will depend on the amount and liquidity of the assets of the insolvent estate. The length of the procedure will also depend on the speed with which any parallel procedure for proving the existence or lack of existence of creditor claim(s) will run (see paragraph 10.3 above). This is why it is still common for the insolvency procedure in complicated cases to run for up to four to five years.

AVOIDANCE OF TRANSACTIONS

4A.020 13. What transactions can be challenged or set aside in the types of insolvency proceedings referred to above?

13.1 In the Part IV Trade Act insolvency procedure, various acts or transactions may be considered void or voidable. The receiver (or upon his failure to do so, any creditor) may make an application to the insolvency court to have certain transactions declared void or set aside. Applications must in all cases be filed before the expiry of one year from the opening of insolvency proceedings.

13.2 The following transactions will be void in the insolvency procedure:

- (a) the following acts and transactions done by the debtor after the initial date of insolvency (as determined by the insolvency court)¹:
 - (i) the performance of any monetary obligation;
 - (ii) gratuitous transactions or transactions at an undervalue concerning assets forming part of the insolvent estate; or
 - (iii) the creation of security (by way of mortgage, pledge or other charge) over an asset or right forming part of the insolvent estate;
 - (iv) the exercise of a right of set-off (see section 14.4 below); and
- (b) the following acts and transactions entered into after the date of the court decision to commence insolvency proceedings if not done in accordance with the procedures set out in the Trade Act in respect of the insolvency procedure:
 - (i) the performance of any obligation arising before the date of the court's decision to commence insolvency proceedings (e.g. payments to the debtor instead of the receiver, see paragraph 6.1 above);
 - (ii) the creation of security (by way of mortgage or pledge) over assets of the insolvent estate; or
 - (iii) any disposal of any right or asset forming part of the insolvent estate.

13.3 The following transactions are voidable in the insolvency proceedings:

¹ An exception is made where the debtor performs a public state debt.

- (a) any gratuitous transaction (except for an ordinary or socially accepted gift) in favour of a party, related to the debtor¹ within **three years** before the commencement of the insolvency proceedings;
- (b) a gratuitous transaction, or a transaction at an undervalue where the value received was considerably less than the value of the right or asset disposed of, entered into with a third party within **two years** before the commencement of the insolvency proceedings;
- (c) the creation of a mortgage, pledge or other security interest in favour of a previously unsecured shareholder that took place within **two years** before the commencement of the insolvency proceedings;
- (d) a transaction with a “related party” damaging the interest of the creditors within **two years** before the commencement of the insolvency proceedings;
- (e) the creation of a mortgage, pledge or other security interest in favour of a previously unsecured creditor that took place within **one year** before the commencement of the insolvency proceedings;
- (f) the performance of a financial obligation by way of a transfer of property that took place within **three months** of the commencement of the insolvency proceedings; or
- (g) a set-off made by a creditor during the insolvency procedure (see paragraph 14.3 below).

13.4 It should be noted that, in addition to the special provisions of the Trade Act, under the general law of torts and obligations, a creditor may request that the court set aside a transaction entered into by its debtor with a view of damaging that creditor’s interests (s.135 of the Obligations and Contracts Act 1950). In practice this claim is of little use to the creditor because it has to prove that the debtor acted in bad faith, and if the transaction was for consideration, the counterparty acted in bad faith too. Bad faith is presumed where the third person is a close relative (spouse, child or grandchild, parent or grandparent, brother or sister).

¹ The term “related parties” is defined in s.1 of the Additional Provisions of the Trade Act. It includes:

1. close relatives (spouses, children and grandchildren, parents and grandparents, brothers and sisters and their children and grandchildren, parents and grandparents of the spouse, etc.);
2. employees and employer;
3. persons one of which is concerned in the management of the other;
4. partners;
5. member having more than 5 per cent of all votes or voting shares and the company or partnership concerned;
6. persons controlled directly or indirectly by the same third party;
7. persons having joint direct or indirect control over a third party;
8. principal and commercial representatives;
9. persons one of which has made a gift to the other; and
10. persons involved directly or indirectly in the management, control or capital of another which facilitates the dealing otherwise than on arm’s length terms, and that other party.

13.5 If a third party has provided consideration in respect of a transaction which set aside in the insolvency procedure, that consideration must be restored to the third party. If that proves impracticable, the third party will become a creditor of the insolvent estate.

INSOLVENCY SET-OFF

4A.021 *14. Give a brief overview of which claims owed to the insolvent company can be set off against claims owed by the insolvent company once insolvency proceedings have been opened.*

14.1 After the date of the decision of the court to open insolvency proceedings under Part IV of the Trade Act, a creditor may set off, against the claim due to it by the insolvent debtor, a claim owed by the creditor to the insolvent debtor only if:

- (a) both claims existed prior to the date of the court's decision to commence the insolvency proceedings;
- (b) the two claims are mutual (i.e. owned to one another in the same right);
- (c) the two claims are of the same kind (e.g. monetary) or become of the same kind as a result of the court's decision to commence insolvency proceedings; and
- (d) at the time of the set-off, the claim owed to the creditor had already matured.

The creditor must notify the receiver (and not the debtor) that it is exercising a right to set off.

14.2 It follows from the above that after the date of the decision of the court to open insolvency proceedings a creditor may not validly set off claims where one of those claims arose after the date of the court's decision to open insolvency proceedings (the "cut-off date").

14.3 Even if both claims have arisen before the "cut-off date" (and the other requirements for set-off are present), the exercise of a right of set-off might be avoided where, at the time of incurring or acquiring its claim against the debtor, the creditor knew that the debtor was already in fact insolvent (or over-indebted) or that a petition for insolvency had already been filed (Art.645(3) of the Trade Act). In this way the legislation aims to prevent the build-up of set-off rights once the parties have knowledge of impending insolvency.

14.4 After the initial date of insolvency (as determined by the insolvency court) the debtor cannot validly set off a claim owed to it by a creditor against a claim owed by it to that creditor, except to the extent that such creditor would be satisfied on a final distribution under the insolvency procedure (Art.645(4) of the Trade Act).

DIRECTORS' LIABILITIES

15. Are there any grounds on which the officers of a company could face criminal or civil liability following the insolvency of a company? If so, give a brief overview of the main areas of concern for directors of companies in financial difficulties. 4A.022

15.1 Directors may face both civil and criminal liability for their actions and omissions in the course of, or prior to the commencement of, the insolvency procedure.

15.2 Directors will most commonly face **civil liability** (and be personally liable) in the following cases:

- (a) where the company becomes insolvent as a result of the negligent actions or omissions of the directors in the course of the management and administration of the company—in such cases, the directors will be jointly and severally liable for any ensuing damage to the company; and
- (b) where they have failed to file for the commencement of the insolvency procedure within 30 days from the date of insolvency (or over-indebtedness)—in such cases, the director (or directors jointly if the company has more than one director) will be liable for any damage such failure has caused to the creditors of the insolvent company (Art. 627 of the Trade Act).

15.3 There are also several criminal law provisions concerning directors which might give rise to **criminal liability** of directors.

- (a) Under Art.227д of the Criminal Code, the directors will be guilty of the offence of “negligent bankruptcy” (punishable by up to two years of imprisonment) where, due to a variety of acts or omissions, the company goes into the insolvency procedure and its creditors’ interests are damaged. The directors may escape liability by personally making good any damage caused to the creditors. Among the acts or omission which could constitute negligent bankruptcy are the following:
 - (i) failing to transact business in accordance with the standard of care to be expected from the “good businessman” or entering into obviously risky transactions outside the scope of the usual activities of the company;
 - (ii) incurring personal expenses on the business account for purposes clearly outside the scope of the company’s business; and
 - (iii) failing to draw up a yearly profits and losses account and a balance sheet (or drawing them up incorrectly).
- (b) Under Art.227б(2) of the Criminal Code, the directors will be guilty of an offence, punishable by up to three years or—if the damages are particularly high—up to 15 years of imprisonment, if they fail to file for the

commencement of the insolvency procedure within 15 days from the company ceasing to make payments to creditors due to its being insolvent.

- (c) Under Art.227r of the Criminal Code, the directors will be guilty of the offence of “wilful bankruptcy” (punishable by fine or up to three years’ imprisonment or/and confiscation of some or all of the guilty directors’ personal property) where, after commencement of the insolvency proceedings, they do a variety of acts which cause considerable damage to the interests of the creditors of the company. Among the acts which could constitute wilful bankruptcy are the following:
- (i) hiding, destroying, damaging or giving away or for abnormally low consideration money, goods, company securities or other valuables which might instead be used to satisfy the company’s creditors;
 - (ii) writing off or hiding a claim due to the company or tempering with its accounts and books to make the ascertainment of the company’s assets and liabilities more difficult;
 - (iii) borrowing money in full knowledge that the company would not be able to repay; or
 - (iv) illegally paying or providing security to some of the creditors to the prejudice of other creditors.

15.4 The language of the statutory provisions cited above is broad enough to encompass (as well as directors) other persons or bodies involved in the management and representation of the company. Therefore, it is arguable that shareholders and shadow directors may also be held liable under civil or criminal law. There are, however, no court precedents on the matter.

B. COURT SYSTEM AND THE JUDICIARY

INSOLVENCY COURTS

4A.023 *16. Do you have any special insolvency courts in your jurisdiction or are insolvency matters dealt with by the general commercial courts?*

16.1 The competent court to hear an insolvency case (as a court of first instance) is one of the 28 district courts of Bulgaria with which the debtor has its commercial registration. The district courts are higher courts of process which also hear commercial, civil and criminal cases as courts of first or second instance. The insolvency proceedings take place in front of a single judge from the commercial division of the district court. The court’s deputy chair allocates a particular judge to particular insolvency proceedings at random (using a computerised case allocation system).

16.2 At first instance, the same district court judge will hear all matters related to the insolvency proceedings, except proceedings initiated by a creditor who has filed an objection against the lists of claims approved by the judge. Such proceedings are heard by another judge of the district court (see paragraph 10.3 above). Also, certain court and arbitration proceedings and enforcement proceedings which, on permitted grounds, are not stayed during the insolvency proceedings will continue in front of the relevant court panel or enforcement judge before which such proceedings were already pending (see paragraphs 6.4 and 6.5 above).

16.3 Where the decisions or the rulings of the district court judge are appealed, the appeal would be heard by a panel of three judges from the Supreme Court of Cessation or by the directly superior Court of Appeal (depending on which decision or order is being appealed).

INSOLVENCY JUDGES

17. *How are insolvency judges appointed in your jurisdiction? Are they elected and, if so, by whom? Who takes the appointments—do you have a concept of a “career judge” or are your judges selected/elected from lawyers/business people? What commercial experience do your insolvency judges have?* 4A.024

17.1 Insolvency judges are appointed in the same way as all other judges. In principle, judges must have a higher education in law and must have passed through a training process with the court and a practical exam at the Ministry of Justice. Furthermore, they will only be appointed by the Supreme Judicial Council after being successful in a contest for the recruitment of judges organised by the relevant court to which they are appointed.

17.2 It is not very common for judges to have another background in addition to their legal background. An appointed judge is not permitted to have any involvement in a commercial enterprise (apart from being a limited partner or shareholder). This is why an insolvency judge will in most cases have no real-life commercial experience. However, since insolvency judges are judges from the commercial divisions of the courts, they will usually have extensive experience in hearing a broad range of commercial disputes.

NATURE OF LEGAL SYSTEM

18. *Is your legal system based on precedent? If not, what is it based on?* 4A.025

18.1 The legal system in Bulgaria is based on the civil law tradition. Acts of Parliament and by-laws of the executive are the only primary sources of law. Judicial precedent is not a primary source of law. A judge is supposed to interpret and apply the laws only. Where the statute is silent then a judge must apply the law by way of analogy to other existing legal provisions.

18.2 As a matter of practice, however, the courts might be persuaded to look at court decisions of the same or higher courts. They are, however, not officially obliged to follow such decisions and would refer to them for guidance only. From time to time the Supreme Court of Cassation (and the Supreme Administrative Court) will issue what is known as an “interpretative decision”. Officially such a decision would interpret the law only, but in practice it would also provide for situations on which the law is silent. These types of decisions are mandatory for all lower courts and come closest to the concept of legal precedent in the common law legal systems.

ROLE OF THE JUDICIARY

4A.026 19. *Does the judiciary follow the black letter law closely or does it, to a degree, shape the law by itself?*

As referred to above (see paragraph 3.5 above), the courts have modified the insolvency procedure in practice in an unfortunate way. If a creditor filing for the commencement of the insolvency procedure has its claim disputed by the debtor in some way, the court will not open insolvency proceedings. This is a practice which evolved from provisions previously existing in Part IV of the Trade Act requiring the claim of the creditor to be undisputed by the debtor. The latest text of the statute does not, however, require that and it is to be hoped that the courts will now change their established practice in this regard.

CROSS-BORDER ISSUES

4A.027 20. *Traditionally, and prior to the coming into effect of the Regulation, what has been the level of co-operation with other jurisdictions in an insolvency context? Now that the Regulation has come into effect, would your insolvency courts recognise an insolvency office holder appointed in another jurisdiction? Would your courts recognise a moratorium on creditor action arising from a foreign proceeding if that moratorium purported to have extra territorial scope?*

20.1 From the very beginning of its existence, Part IV of the Trade Act provided that:

- (a) Bulgaria will recognise, on the basis of reciprocity, a foreign court judgment declaring a debtor insolvent, where the judgment is issued in the country where the debtor has its “seat” (the equivalent of the registered office in the UK);
- (b) a receiver, appointed under a foreign court judgment, will enjoy the same rights in Bulgaria as those granted to it by the country where the insolvency proceedings were opened (provided that those rights do not contradict Bulgarian public policy provisions); and

- (c) Bulgarian courts may open an ancillary insolvency procedure for a trader who has been declared insolvent by a foreign court if the trader has considerable assets in Bulgaria. The request must be made by a creditor, the debtor or the receiver in the main insolvency proceedings. Furthermore, the following will apply to the ancillary insolvency procedure:
- (i) a claim to set aside a transaction filed under the main or the ancillary procedure will be considered as made in both procedures;
 - (ii) a creditor partly paid in the main proceedings may take part in the distributions in the ancillary proceedings provided that the creditor does not receive more than the rest of the creditors, participating in the ancillary proceeding;
 - (iii) a restructuring plan can be adopted in the ancillary proceedings only with the consent of the receiver in the main proceedings; and
 - (iv) any assets remaining (following the distribution to the creditors in the ancillary proceedings) will be used for distribution under the main proceedings.

20.2 At the time of writing, there have been no additional provisions adopted by Parliament in connection with Bulgaria joining the EU and the Regulation coming into effect. However, as the Regulation has direct effect across the EU, no implementing legislation is necessary and the Regulation became automatically effective in Bulgaria on January 1, 2007 when it acceded to the EU.

REGISTERED OFFICE

21. *As a matter of your domestic law, is it possible for a company registered in your jurisdiction to move its registered office to another jurisdiction?* 4A.028

It is not possible for a company registered in Bulgaria to move its registered office outside the jurisdiction without deregistering from the commercial register.

22. *Would your court/companies registry recognise a purported move of a foreign company's registered office to your jurisdiction?*

A company which would like to move its registered office in Bulgaria has to re-register itself as a Bulgarian company in the commercial register.

REGISTRATION AND PUBLICATION REQUIREMENTS

4A.029 23. Are there any mandatory requirements under your domestic insolvency legislation to publish or register the details of any insolvency proceedings commenced in your jurisdiction?

23.1 Part IV of the Trade Act provides that the decision of the court to open insolvency proceedings (as well as the rest of the cornerstone decisions and orders of the court in the insolvency process) shall be registered in the commercial register. Those provisions are not yet in force at the time of writing due to the fact that there have been some difficulties with the setting up of the centralised commercial register to replace the current commercial registers kept with each district court. The new provisions of Part IV of the Trade Act regarding registration shall enter into force on January 1, 2008¹.

23.2 Currently, the court's decision to open insolvency proceedings is published in the State Gazette and noted in the commercial register kept with the relevant district court.

24. Are there any mandatory requirements in your jurisdiction, under Arts 21(2) or 22(2) of the Regulation, to publish or register the details of insolvency proceedings opened in another EU Member State in any particular manner including in any land register, trade register or other public register kept in your jurisdiction?

There are currently no provisions requiring that insolvency proceedings commenced in another EU Member State must be published or registered in any particular way in Bulgaria.

25. If there are no mandatory publication or registration requirements, would it still be possible to register foreign insolvency proceedings in your jurisdiction (for example, to give notice of such proceedings to creditors in your jurisdiction)?

The opening of foreign insolvency proceedings can only be published in the general press in Bulgaria. Official publications, such as the State Gazette, will not accept such information for publication.

26. Is it possible for an interested party to search, in your jurisdiction, for the existence of insolvency proceedings in respect of a particular company and how reliable are such searches?

26.1 It is the intention that, once the new centralised commercial register system is up and running, everyone will be able to look up its contents on the internet. The

¹ Law on Amendment of the Commercial Register Act, State Gazette—issue 53 of 2007

provision of the name of the company against which a winding-up search will be carried out would probably suffice to find out the details of any insolvency proceedings.

26.2 Under the current registration regime, where the decision of the court to commence insolvency procedure is published in the State Gazette and also noted in the commercial register kept with the relevant district court, an interested party could:

- (a) try to search the contents of the State Gazette to find a notice of the court's decision to commence insolvency proceedings, using the internet or a paid legal database¹; or
- (b) go in person to the relevant district court and look up the register currently kept with that court. It is also possible to request, for a small fee, an extract from the register. This extract will show whether the debtor is subject to the insolvency procedure and, if so, the name of the receiver appointed.

In both cases it must be kept in mind that there would be several days' difference between the date of a decision or an order issued in the insolvency procedure and their entry in the commercial register, as well as around a month's difference between their publication in the State Gazette and several days after that for the entry in any paid legal database.

This chapter was prepared with the kind assistance of Gergana D. Avramova (Allen & Overy LLP, London).

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¹ Ciela, Daxi, Apis or Norma, for instance.

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