LEXOLOGY®
Getting The Deal Through

Restructuring & Insolvency

in Israel

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Table of contents

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Israel

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GENERAL

Legislation

What main legislation is applicable to insolvencies and reorganisations?

On September 15, 2019, the Insolvency and Economic Rehabilitation Law-2018 (the Insolvency Law) came into force, which regulates Israeli insolvency practice, thereby replacing all relevant former legislation. The Insolvency and Economic Rehabilitation Regulation – 2019 also came into force in September 2019. Insolvency proceedings that were initiated before September 2019 remain subject to the Companies Ordinance (New Version) – 1984 (and the Companies Regulation (Liquidation) – 1987)and the Companies Law-1999. The Bankruptcy Ordinance (New Version), 1980, and the Bankruptcy Regulations, 1985 continue to apply to individual persons' proceedings initiated before September 2019.

Excluded entities and excluded assets

What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The Insolvency Law applies to all corporations and partnerships that are registered in Israel or that manage business or have assets in Israel. It does not apply to associations regulated by the Associations Law - 1980 or to companies for the public benefit regulated by the former legislation of the Companies' Ordinance-1984, which applies until 2024.

Public enterprises

What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

Government-owned enterprises may be voluntarily liquidated by the government, subject to applicable legislation which includes the Government Companies Law -1975. Insolvency proceedings for government-owned companies are subject to the Insolvency Law

Insolvency proceedings for public enterprises are conducted in accordance with the Insolvency Law. Sections 337-345 of the Insolvency Law provide an option that applies only to public enterprises to conduct protected negotiations for debt settlement, subject to restrictions by law and the ability of creditors to initiate insolvency proceedings. A condition for conducting such proceedings is that the company's board declares that the corporation will be able to repay its debts that will be due in the subsequent nine months.

Protection for large financial institutions

Has your country enacted legislation to deal with the financial difficulties of institutions that are considered ‘too big to fail’?

No. The Insolvency Law applies to all enterprises. There are certain instructions regarding publicly traded corporations or listed bonds companies. With respect to financial institutions, there are regulations regarding their activity to prevent their collapse, but in the event that such an institution is determined to be insolvent, the proceedings will commence under the Insolvency Law.

Courts and appeals

What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

A corporation's insolvency proceedings are conducted in the district court located in the jurisdiction of that corporation's registered offices (section 4(1) of the Insolvency Law).

The right to appeal a judgment of a district court of first instance is to the Israeli Supreme Court. Section 349(a) of the Insolvency Law defines what constitutes a judgment, including a decision regarding an application to open insolvency proceedings, a decision regarding an application for liquidation, etc. With respect to a creditor's debt claim, Section 215 of the Insolvency Law stipulates that anyone who considers him or herself aggrieved by the trustee's decision regarding a debt claim has a right to appeal that decision to the court in which the insolvency proceedings are conducted.

In the case of an appeal, the court has discretion to require that the appellant provide a security deposit in an amount determined in relation to the damage that may be caused to the party against whom the appeal is filed.

TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

Voluntary liquidation is subject to a solvency affidavit by the company's directors, stating that the company has sufficient funds to pay all of its liabilities within the subsequent 12 months. This affidavit is placed in front of the general assembly of the company's shareholders, to decide on the initiation of voluntary liquidation proceedings and the appointment of a trustee to manage such proceedings. Notice is then sent to the Companies' Registrar and the insolvency process begins. At any time, both the trustee and creditors of the company have the right to petition the court for remedies, including in a case where the company is found to be insolvent (section 342 of the Companies Law-1999).

A company may also voluntarily initiate its own insolvency proceedings if it is insolvent, or if the order will help prevent its insolvency, and when its total debts exceed 25,000 Israeli shekel (Section 7(a) of the Insolvency and Economic Rehabilitation Law-2018).

Voluntary reorganisations

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

The Insolvency and Economic Rehabilitation Law-2018 (the Insolvency Law) allows for a voluntary process of debt settlement or reorganization without issuing an insolvency order or a stay of proceedings. There are no preconditions for carrying out the process. A debtor may, at any time, apply to the court to convene a creditors' meeting and appoint

an arrangement manager, and propose a debt settlement or reorganisation plan. The process of approving the arrangement at a creditors' meeting is the same as the process of approving an insolvency debt plan. However, since there is no stay of proceedings, any of the creditors may at any time apply to court for an insolvency order and then, assuming the debtor is indeed insolvent, the voluntary process will cease.

Successful reorganisations

How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability and, if so, in what circumstances?

Classification of creditors for the purpose of voting on a rehabilitation or reorganization plan is performed by the trustee, with each class of creditors which has a common interest regarding the plan, that is substantially different from the interests of the other creditors, and that may justify holding a separate meeting, being classified as a separate class. Common classes of creditors include secured, unsecured and priority rights owners' creditors, each of which represents a different class (section 84(a) of the Insolvency Law).

A reorganisation plan approved by the creditors may include concessions to various parties or a different arrangement for different classes of creditors. If an exemption from claims against officers, directors or shareholders is requested, the proposed reorganisation plan should include the estimated economic value of such a waiver, to the best of the trustee's knowledge and assessment, and all considerations for granting such exemption (section 82(b)(5) of the Insolvency Law).

Involuntary liquidations

What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

A creditor applying for an insolvency order will need to prove that the debtor is insolvent. The creditor may utilise the presumptions set forth under law, including, among others, if the corporation has not paid a debt of over 75,000 shekels within 30 days of its claim, or has not paid a debt pursuant to a court verdict. There is no difference between a proceeding initiated by a creditor or voluntarily by the debtor (sections 9 and 10 of the Insolvency Law).

Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

A creditor may request to convene interested parties' meetings in order to vote on a proposed settlement or reorganisation plan, if the conditions for filing an application for an insolvency order are met. For example, if it can be proved that the debtor is insolvent. There is no difference between a proceeding initiated by a creditor or voluntarily by the debtor (section 321(a)(2) of the Insolvency Law).

Expedited reorganisations

Do procedures exist for expedited reorganisations (eg, ‘prepackaged’ reorganisations)?

A reorganisation process that is commenced without an insolvency order is considered to be an expedited proceeding and allows seeking an order for convening of a creditors' meeting for approval of a restructuring plan or debt settlement, without the need for an insolvency order and with the appointment of a functionary to execute the process.

Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

A reorganisation plan is brought before a creditors' meeting for approval by a majority of at least 75 per cent of the debt value and 50 per cent of the creditors present and voting. If the reorganisation plan presented fails, the court will decide whether to give the trustee a chance to prepare an alternative plan or it may order the company’s dissolution. Failure to comply with an approved arrangement constitutes a breach of contract against the creditors who can seek to enforce its provisions in court.

Corporate procedures

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

Section 342 of the Companies Law allows a company's voluntary dissolution by either of a shareholders' decision on voluntary liquidation, or by a court ruling under certain circumstances per law. The law determines that if, during the dissolution of a company in accordance with the Companies Law, insolvency proceedings were opened against that company, the court must order the termination of the dissolution proceedings and the continuation of the insolvency proceedings. The main difference between the processes is the supervision of the court with respect to insolvency proceedings that is absence in the voluntary proceedings. All rights of the creditors remain the same.

Conclusion of case

How are liquidation and reorganisation cases formally concluded?

In the event of a winding-up order, after the completion of the company’s liquidation, the court will order that its dissolution be updated in the Companies’ Register. Reorganisation constitutes a contract between the company and its creditors and it enters into force if its conditions are met. The reorganisation ends with the completion of the requisite actions of the reorganisation as determined by the trustee on behalf of the court. There are reorganisation processes that upon entry into force (for example by making a financial investment in the company) the company returns to its regular course of business and there are arrangements that last longer in which the company is required to improve and realise assets over a period of time.

INSOLVENCY TESTS AND FILING REQUIREMENTS

Conditions for insolvency

What is the test to determine if a debtor is insolvent?

Section 2 of the Insolvency and Economic Rehabilitation Law-2018 (the Insolvency Law) determines two substantial insolvency tests: the balance sheet test and the cash flow test. Insolvency is defined as an economic situation in which a debtor is unable to pay its debts on time, whether or not they are currently due, or where the debtor's liabilities, including its future and contingent liabilities, exceed the value of its assets.

Mandatory filing

Must companies commence insolvency proceedings in particular circumstances?

The Insolvency law does not define an obligation to initiate proceedings. However, it imposes on the officers of an insolvent company a duty to reduce the scope of insolvency. An application to open proceedings is one of the protections for officers against the imposition of this responsibility. Hence, when officers do not see a reasonable alternative to reducing the scope of insolvency, they are obliged to initiate the opening of insolvency proceedings in court.

DIRECTORS AND OFFICERS

Directors' liability – failure to commence proceedings and trading while insolvent

If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

The new Insolvency and Economic Rehabilitation Law-2018 stipulates that if a director or CEO knew or should have known that the corporation was insolvent, and did not take reasonable measures to reduce the scope of insolvency, the court may, per the request of the trustee and after issuing an insolvency order, order that such director or CEO be liable to the corporation for damages to its creditors resulting from such director's or CEO's failure to act. One of the measures that a director is expected to take, per section 288(b) of the Insolvency Law, is to actively initiate insolvency proceedings.

Directors' liability – other sources of liability

Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

An officer or person who previously held office may be liable for breaching an obligation towards the corporation and may be required to compensate, repay or return certain property to the corporation (section 289 of the Insolvency Law). In the case of fraudulent management by an officer, or if the court found that a previous officer knowingly co-managed the corporation in a fraudulent manner, the court may determine that such officer is liable for damages to the corporation resulting from such fraudulent management and may disqualify such officer from serving as an officer in another corporation for up to five years (section 290 of the Insolvency Law). The Insolvency Law does not provide for

criminal sanction for directors or officers in connection with insolvency proceedings. However, there may be criminal consequences resulting from ancillary actions to insolvency under other legislation (such as, for example, violation of tax legislation provisions connected to insolvency or labor laws).

Directors' liability – defences

What defences are available to directors and officers in the context of an insolvency or reorganisation?

A possible defence for a director or officer would be to show that he or she has taken measures prescribed by law to reduce the scope of insolvency, including consulting with insolvency experts or negotiating with the company's creditors to reach a debt settlement. Initiating insolvency proceedings may also serve as a defense for the director or officer in this regard. Directors may also be afforded protection by the Business Judgment Rule (BJR), which provides that in cases where the decision-making process was appropriate, the director will not be judged according to the undesirable outcome of such a decision.

Shift in directors' duties

Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

Once a director or officer knows (or should know) that the corporation is insolvent, in addition to his existing fiduciary duties, he or she also has a duty to reduce the scope of insolvency. A director or officer may therefore be liable for damages caused to creditors as a result of failing to reduce the state of the corporation's insolvency.

Directors' powers after proceedings commence

What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

Upon appointment of a trustee and initiation of insolvency proceedings, all powers vested in the corporation's organs and officers are transferred to the appointed trustee (section 43 of the Insolvency Law). It is possible to keep officers in office under the trustee or to appoint one of them as a trustee, under certain circumstances. Section 91 of the Insolvency Law provides that after a restructuring has been approved, the powers transferred to the trustee shall be returned to the company's organs, according to the provisions of the arrangement plan and on the date specified therein, unless otherwise ordered by the court.

MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

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?

The Insolvency and Economic Rehabilitation Law-2018 (the Insolvency Law) directs that upon issuance of an order to open insolvency proceedings, an order for stay of proceedings is given automatically (section 25 of the Insolvency

Law). The moratorium means that it will not be possible to initiate collection proceedings for past debts or to continue with proceedings that have not yet been completed; the realisation of mortgaged assets will be subject to the limitations and provisions of the Insolvency Law; it will not be possible to impose a lien on the assets of the liquidation estate; and it will be impossible to initiate or continue any legal proceedings without the insolvency court's approval (section 29 of the Insolvency Law). Such approval will be given for special reasons according to the complexity of the procedure and its efficient management. The stay of proceedings shall not apply to criminal or administrative proceedings (section 31 of the Insolvency Law).

Doing business

When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given 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?

Following the issuance of an order initiating insolvency proceedings and the appointment of a trustee, the court shall examine whether there is a reasonable chance for economic rehabilitation of the corporation and whether there is sufficient interim financing for the corporation's operation until the approval of the rehabilitation plan. The trustee will continue the operation of the corporation with the intent of preserving its value as a 'going concern', subject to the provisions of the law and the court's instructions.

In cases where the trustee operates the corporation, existing contracts are not automatically revoked, and they continue to be valid contracts but with the trustee. However, any payment for the continued supply of services and goods to the corporation operated by the trustee will be made from the liquidation fund and will constitute liquidation expenses, which take priority over repaying past debts to creditors. It is possible for each of the parties to address the court under certain circumstances and to cancel existing contracts, but with regard to the provision of material services (including infrastructure and essential services), there are stricter conditions for terminating the service.

In the event of an application for approval of a debt settlement without an order initiating insolvency proceeding, the corporation's activities can continue as usual. As part of a protected negotiation procedure in a public corporation, a representative of the creditors may be appointed as an observer of the board and its committees.

Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

If the court believes there is a chance for the economic rehabilitation of the corporation, and the appointed trustee operates the corporation as a going concern, it is possible to incur new credit needed to finance the corporation's continued operation. New debt incurred by a corporation would be classified as liquidation expenses. To secure the new credit, it is also possible to pledge assets that are not encumbered to another creditor or to grant a deferred lien on an asset that is already encumbered. In special circumstances, it is possible to mortgage an asset even to the same degree as an existing pledge.

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?

The law provides that an appointed trustee shall not perform a transaction using assets of a corporation's liquidation estate, which is considered an exceptional transaction under section 1 of the Companies Law-1999, unless the court has confirmed that the transaction is necessary for the corporation’s economic rehabilitation (section 59 of the Insolvency Law). Under certain conditions set forth in section 62 of the Insolvency Law, a trustee may use the corporation's property (even if it is encumbered to a secured creditor), by selling it or leasing it, including selling it free from any lien or other right, provided that such use or sale is necessary for the corporation’s economic rehabilitation and that the consideration received ensures adequate protection for the creditor.

The sale of all of the corporation's activities can be made as part of a creditors' settlement or as a sale that does not involve a settlement plan, in which case it requires the prior approval of the court, which will consider the fairness of the process (section 93 of the Insolvency Law). As part of the approval for the sale of the corporation's assets, a 'free and clear' sale is requested and usually approved unless certain liabilities are associated with the sold assets (eg, continued agreements that are part of the business sold) .

Negotiating sale of assets

Does your system allow for ‘stalking horse’ bids in sale procedures and does your system permit credit bidding in sales?

The Insolvency Law stipulates that the trustee must manage the assets of the liquidation fund while preserving and improving their value and must realise them in a way that will reflect their value (section 226 of the Insolvency Law). However, the law does not exactly prescribe the manner in which the trustee must work to realise the assets. In practice, it is customary to hold a competitive procedure open to the public and thereafter, if there are a number of relevant offers, to hold a bidding or similar to raise the consideration, with no obligation to accept the highest bid if the trustee or court deems it unsatisfactory. A tender by way of 'Stalking Horse' is not common, but there is no impediment to holding it. Consideration offered by a creditor as debt conversion is subject to the court being convinced that this is the best contribution to the creditors' fund and there is no preferential treatment of creditors thereby.

Rejection and disclaimer of contracts

Can a debtor undergoing a liquidation or 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? What happens if a debtor breaches the contract after the insolvency case is opened?

The trustee may cancel an existing contract with the approval of the court, even if there is no contractual reason for it, provided that the application is submitted within 90 days of the insolvency order date. The court may approve the contract’s cancellation, subject to the other party's right to be heard, if it finds that cancellation is required for the sake of the company’s economic rehabilitation or will increase the rate of debt repayment to the creditors (the court may also order partial cancellation and the application may be resubmitted pursuant to a change in circumstances). In the event of a reorganisation process without insolvency order, the company continues to operate as usual and any breach

of contract or obligation prior to the plan's approval may result in legal proceedings against the debtor.

Intellectual property assets

May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

There is no specific reference to an IP licensor in the Insolvency Law. In the case of a company's operation by the trustee with a chance for economic rehabilitation, an existing agreement may not be cancelled solely due to insolvency or issuance of the order. Such cancellation may be done with court approval, and the court will examine whether the continued use of IP is necessary for the company's economic rehabilitation and whether there are sufficient funds to pay for ongoing expenses.

Personal data

Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

Israeli insolvency laws do not refer to the nature of the property sold as part of the liquidation proceedings and it is certainly possible to sell a business database of the debtor. However, there are databases that are protected under the Privacy Protection Act-1981 and therefore the Privacy Protection Authority should be notified of the sale and it would need to comply with Israeli privacy legislation.

Arbitration processes

How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Arbitration is not used in insolvency and proceedings. There is no provision to seeking arbitration in reorganisation proceedings, though not common. The court may refer parties to mediations in certain disputed arising of the main proceedings

CREDITOR REMEDIES

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?

Once an order has been issued initiating insolvency proceedings, the realisation of all of the corporation's assets is carried out within the framework of the insolvency proceedings and it is not permissible to realise the assets outside of that framework, with the exception of the realisation of assets protected under a fixed charge. In the case of insolvency proceedings in which the corporation's business is operated for rehabilitation purposes, pledged property can be

realised if it does not provide adequate protection for the secured creditor or the property is not required for the debtor's economic rehabilitation. If the court approves the realisation of an asset outside of the insolvency proceedings, the court will examine whether the value of the encumbered asset is significantly higher than the secured debt (which may then be realised by the secured creditor outside of the proceedings or under the trustee's supervision). If the debt amount is lower than the value of the property, the realisation will usually be done by the trustee as part of the insolvency proceedings (Section 248 of the Insolvency and Economic Rehabilitation Law-2018).

Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

Unsecured creditors must submit their debt claims within six months of the insolvency order and pay a fee of 30 shekels (section 209 of the Insolvency Law). The process is very simple and is time-consuming only if the debt is factually difficult to prove. The trustee determines the validity of the claims within the framework of the law and there is no pre-judgment, all unsecured creditors are considered equal.

CREDITOR INVOLVEMENT AND PROVING CLAIMS

Creditor participation

During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they 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 the liquidator's reporting obligations?

The initiation of insolvency proceedings and the granting of such order are published on the debtor's website and by the Official Receiver on the Ministry of Justice's website. If the debtor initiated the process, he or she must notify the material creditors immediately. Notices regarding creditors' meetings and distributions are also published by the Official Receiver. Creditors can review the company's or the trustee's documents if justified, and if such perusal does not violate any person's privacy and is approved by the court. The trustee must report to the court at least once a year and all interested parties may review those reports.

Creditor representation

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

The court may appoint up to five members to form a creditors' committee to represent unsecured creditors and to assist the insolvency process. Such a committee is entitled to present its opinion and the trustee must consult it under certain circumstances (litigation proceedings in the debtor's name, taking any new credit or liens, an influential settlement with a creditor, etc.). Regulations regarding the manner in which the work of such a committee must be carried out have not yet been published and therefore there are no further details of the manner in which this committee should work.

Enforcement of estate's rights

If the liquidator 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? Can they be assigned to a third party?

There is no specific authority on this point. However, in our experience, usually in these circumstances the creditors agree to fund the costs of the trustee or the trustee requests external funding, so that the trustee may pursue claims accordingly. The fruits of the remedies will depend upon the terms of such funding agreement, which may also need the court's approval.

Claims

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

A creditor's debt claim must be filed within six months of the insolvency order by using a standard form that is available online. The appointed trustee makes the decisions concerning such claims within 90 days based on the evidence and documentation attached by the creditor (section 121 of the Insolvency and Economic rehabilitation Regulations – 2019) and contained in the company's books. Creditors have a right to appeal to the insolvency court within 45 days of the trustee's decision (section 131 of the Insolvency Regulation). All debt may be sued for, including the penalties that the debtor owes at the time the insolvency order is issued (including contingent and conditional payments). A debt may also be due to an act or omission committed by the debtor before the order, but where the debt itself was created after the order date (section 4 of the Insolvency Law). There are no prohibitions on transferring or assigning debt. Interest accrued after the opening of proceedings is classified as additional interest and is payable after the repayment of all unsecured debt.

Set-off and netting

To what extent may creditors 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?

Section 255 of the and may file a debt claim for the balance, if there is one. The aforementioned are subject to the following conditions being met: (1) the debts are intertwined; (2) relying on the right to offset is part of the normal course of business of the debtor or creditor, and the past debt that the creditor seeks to offset was created as part of his mutual business with the debtor; or (3) the debts can be offset according to the Tax Offsetting Law-1980 or the National Insurance Law - 1995.

Modifying creditors' rights

May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

The trustee examines and decides the debt claims of all creditors and determines their rank in terms of priority

according to the tests set forth in the law, and as long as the creditor meets the conditions, his status will not change except pursuant to the approval of a repayment plan. The Companies Law-1999 allows the court to subordinate shareholders debts so they will be repaid only after the unsecured creditors in circumstances that justify piercing the incorporation veil with regards to the shareholders.

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?

Creditors who have a fixed charge on specific assets are ranked as the top priority, after which the proceeding's expenses, including the trustee's fees, are ranked second. Privileged claims, such as employee-related debts, withholding tax obligation of an employer, value added tax and tax debt whose payment is spread over a debt settlement, are ranked third. All these are ranked higher and with priority over a floating lien secured creditor.

Employment-related liabilities

What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

Employee claims in insolvency proceedings are primarily monetary claims for breach of wage terms, prior notice, and social conditions under law or per the employment agreement's terms. Employee claims for unpaid wages and severance pay in amounts not exceeding the amount specified in the law are legal obligations that will be repaid before any debt to a secured creditor guaranteed by a floating charge. Upon issuance of an insolvency order, any employee can apply to the National Insurance Institute to file a debt claim. No significance is given to the scope of the employee in the insolvent company, but there may be differences in the rights to be paid to the employees if a sale of the company's activities occurs as part of the restructuring.

Pension claims

What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

The pension fund to which the employer has not deposited the employee's social rights may claim the debt in an amount up to double the basic amount due to each employee, as stipulated in the National Insurance Law-1995, even if the claim for each employee is filed by several pension funds.

Environmental problems and liabilities

Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Liability for environmental problems can potentially involve criminal liability, civil liability or administrative liability, subject to the relevant legislation. In the event that the company continues its operation (through the trustee) the company's environmental liabilities (including health and safety-related liabilities), as well as officers' liability, will continue to apply regardless of the insolvency process and it is within the trustee's responsibility and the considered as liquidation expenses.

Liabilities that survive insolvency or reorganisation proceedings

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

Once an approved reorganisation plan or debt settlement is approved by the majority of creditors and the court it will be binding on all of the creditors.

Distributions

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

The trustee will distribute to creditors whose debt claim has been approved, from time to time and as soon as possible, funds accumulated from the realisation of the company's assets (deducting the costs of the realisation). The trustee shall not pay as interim distributions any amounts necessary to repay a debt where that debt claim has not yet been approved or become final and where the amounts are necessary to finance the expenses of the proceedings. A final distribution will be made after the realisation of all assets, final decisions on all debt claims and payment of the full expenses of the procedure, including the trustee's fee. Before making a final distribution, the trustee will publish a notice to that effect.

SECURITY

Secured lending and credit (immovables)

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

The most common form of security interest granted over immovable property (real estate) is a mortgage. A mortgage can be granted over real estate property that is registered with the Israeli Land Registry. If the real estate property is not yet registered, a security interest can be granted over it via a pledge. A mortgage and a pledge are similar in most legal characteristics but differ in their registration procedures. Under the Land Law-1969, the registration of a mortgage with the Land Registry has strong binding power and is very difficult to challenge. Therefore, a registered mortgage is considered a valuable and trustworthy security.

Secured lending and credit (movables)

What principal types of security are taken on movable (personal) property?

The most common form of security interest over tangible movable property is a charge. In Israel, a charge is also referred to as a fixed charge. Charges are mainly governed by the Pledge Law 1967 (Pledge Law), which defines a charge as a lien over an asset created to secure repayment of a debt. Companies can also grant a floating charge over

all or part of their assets. A floating charge is governed by the Companies Ordinance [New Version] - 1983. A company whose assets are subject to a floating charge can sell and buy assets and enter into transactions in the ordinary course of business. If certain events occur (as specified in the debenture or other instrument creating the floating charge), the floating charge crystallises and becomes a fixed charge. An asset may also be pledged by the creditor holding such asset.

CLAWBACK AND RELATED-PARTY TRANSACTIONS

Transactions that may be annulled

What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

The court may cancel an action that resulted in the repayment of a creditor's debt or its receipt of a payment at a higher level of priority than it should have received, if such action was performed within three months prior to the insolvency order. An action will be canceled if, at the time of execution, the debtor was insolvent and if, due to the action, that creditor will be repaid a larger portion of the debt compared to what would have been repaid upon regular distribution. The court will not annul such action if the debtor received appropriate consideration for it or if it was carried out in the debtor's ordinary course of business.

The court may also cancel an action taken within two years prior to the order issuance, due to which action an asset was removed from the estate. This is if, at the time of the action, the debtor was insolvent or the execution of the action led him or her to insolvency and if the action was performed without consideration or if the consideration paid was not appropriate under the circumstances. An action taken within seven years prior to the order may be revoked if it was carried out with the aim of smuggling property from creditors. In each case, the rights of any third party who purchased or performed an act in good faith and for consideration will be preserved.

Equitable subordination

Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

There are no restrictions on such claims, although the repayment of approved debt to shareholders may be subordinated to all other debts of the company in the event that the court decides to pierce the corporate veil or classifies the debt is as an investment other than debt.

GROUPS OF COMPANIES

Groups of companies

In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

Section 6(a) of the Companies Law-1999 states that a court may attribute a company's debt to a shareholder of that company (piercing the corporate veil) in exceptional cases where a legal entity is used in one of the following ways: (1) in a manner meant to deceive a person or deprive a company's creditor; or (2) in a manner detrimental to the company's purpose and while taking unreasonable risks regarding its ability to repay its debts, provided that the shareholder was aware of such use. The court will usually limit itself to clear causes (despite the flexible definition) such as fraud or a

particularly large leverage ratio.

Combining parent and subsidiary proceedings

In 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?

Israeli law stipulates that every company has a separate legal personality, and therefore insolvency proceedings will be taken, as necessary, against each company separately. This is partially a result of the fact that different companies have different creditors with different interests that need to be protected. When there is no fear of a conflict of interest, and in order to streamline the proceedings, the court may appoint the same trustee for the entire group of companies and set provisions regarding the separation between the various funds.

In any case, each property will be used solely for its owner and only for the purposes of distribution to its creditors.

INTERNATIONAL CASES

Recognition of foreign judgments

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?

Israel has adopted parts of the UNCITRAL Model Law as part of the new and Economic Rehabilitation Law-2018. Among other things, certain sections have been established to recognize foreign proceedings. Foreign proceedings are judicial or administrative proceedings conducted in a foreign country, under insolvency law, in which the debtor's relationship with creditors is consolidated, and the debtor's assets and affairs are subject to the responsibility or supervision of a competent foreign authority regarding the debtor's economic rehabilitation or liquidation.

The new Insolvency Law distinguishes between a primary foreign procedure and a secondary foreign procedure and stipulates different orders for each.

UNCITRAL Model Law

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

Yes, Israel has adopted most of the UNCITRAL Model Law on Cross-Border Insolvency orders as part of chapter 9 of the Insolvency Law.

Foreign creditors

How are foreign creditors dealt with in liquidations and reorganisations?

The status of foreign creditors and their rights regarding the initiation of and participation in insolvency proceedings are identical to the status and rights of Israeli creditors (section 298 of the Insolvency Law).

Cross-border transfers of assets under administration

May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

The new Insolvency Law has adopted the provisions of the UNCITRAL Model Law and allows a foreign official or appointed administrator to take part in Israeli insolvency proceedings conducted against the same debtor. In such case, if the Israeli court has recognised the foreign proceeding, it may be possible to transfer assets between two proceedings in different countries and the foreign official may be able to seek instructions and assistance from the Israeli court regarding Israeli assets.

COMI

What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

The Insolvency Law defines the place of registration as the COMI, unless proven otherwise, in order to acknowledge foreign insolvency proceedings (section 293 of the Insolvency Law). In order to commence primary insolvency proceedings in Israel, the tests are whether or not the debtor conducts its business or has assets in Israel (section 5(b) of the Insolvency Law).

Cross-border cooperation

Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

The Insolvency Law adopted the UNCITRAL Model Law of cross-border insolvency and provides guidelines for cooperation between Israeli courts and administrations and their foreign parallels. Foreign proceedings refer to judicial or administrative proceedings conducted in a foreign country, under insolvency law, and in which the debtor's relationship with creditors is consolidated and the debtor's assets and affairs are subject to the responsibility or supervision of a competent foreign authority, regarding the debtor's economic rehabilitation or liquidation.

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?

Since the new Insolvency Lawentered into force, only one case of cross-border cooperation was published. In this case, the Israeli court accepted an Australian liquidation proceeding as a foreign main proceeding and granted the Australian

liquidator remedies per his request (insolvency case (Tel Aviv) no. 5936-10-19 re. B.C.I FINANCES PTY LTD and others).

Winding-up of foreign companies

What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

The Insolvency Law applies to foreign companies conducting business in Israel or who have assets in Israel.

UPDATE AND TRENDS

Trends and reforms

Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

Although the Insolvency and Economic Rehabilitation Law-2018 entered into force only about a year ago, the law has caused a legislative revolution in Israeli insolvency practice, codifying all existing legislation and precedents into one document for corporations and individuals. In nearly every such proceeding that appears before the court, precedents or new implementations of the new law are established under the relevant section thereto (that does not necessarily mean substantial changes to the old binding rules). Particularly hot topics are the officers' and directors' liability to reduce the scope of insolvency set forth in section 288 of the Insolvency Law.

These days, and in light of the covid-19 pandemic, a law memorandum has been published to create a new and easier route for approving debt settlements, specifically for debtors who have fallen into temporary liquidity insolvency and are required to suspend proceedings until the settlement proposal is approved. The law memorandum has not yet been submitted to the legislature for approval.

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns?

No specific laws or governmental programmes were published in the corporate insolvency areas of practice.

The Ministry of Finance adopted an economic plan to deal with the covid-19 pandemic including grants, relief, and rights in various areas and for a total budget of 100 billion shekels.

The Banking Supervision Department announced a comprehensive framework that was adopted by the banking system and the credit cards companies for deferring loan payments to assist customers in dealing with the ramifications of the covid-19 crisis.

LAW STATED DATE

Correct on:

Give the date on which the above content was accurate.

11 October 2020.