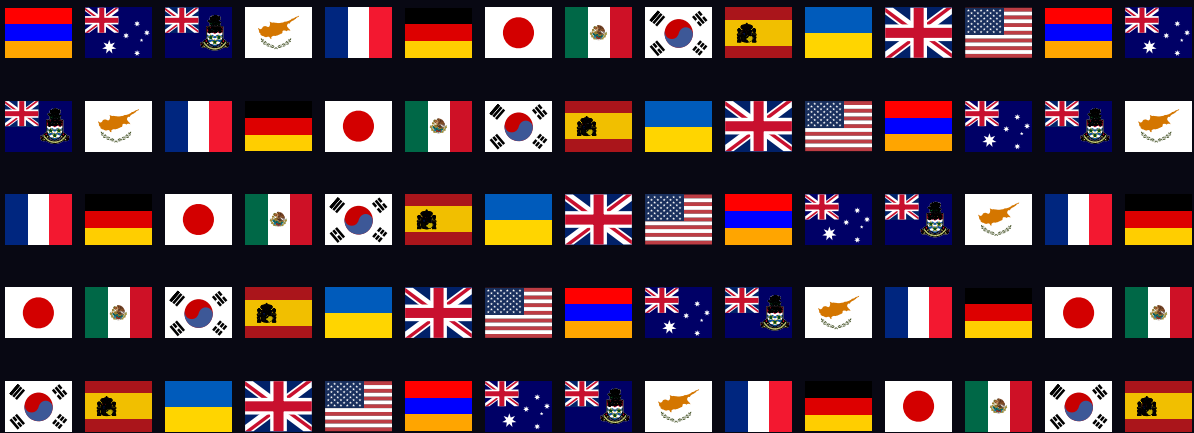


INSOLVENCY LITIGATION

Armenia



Insolvency Litigation

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Latham & Watkins LLP

Quick reference guide enabling side-by-side comparison of local insights, including into pre-litigation considerations; avoidance actions; claims against directors, officers and shareholders; creditor actions and strategic considerations; pre-insolvency debtor claims; other claims against creditors and debtors; cross-border considerations; remedies and enforcement; settlement and mediation; and recent trends.

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COMMENCING PROCEEDINGS

Litigation climate

How would you describe the general climate surrounding insolvency litigation in your jurisdiction? What are the most common sources of dispute? To what extent is litigation used as a pressure or delay tactic?

In general, the existing regulations on insolvency litigation are effective, though proceedings may be extended under certain regulations. Recently, the number of insolvency cases has increased due to the lack of trade resulting from the deteriorating economic situation. The establishment of a special bankruptcy court has also facilitated the growth of cases.

The most common sources of dispute are contractual obligations and confiscation of money. Litigation is generally used for disputing the grounds for bankruptcy in a court of general jurisdiction, which may result in the bankruptcy application being rejected or certain processes in the bankruptcy proceedings being suspended. For example, if an applicant is successful in bringing a lawsuit, the sale of property in the bankruptcy proceedings may be suspended.

Law stated - 31 August 2021

Sources of law

What key sources of law form the basis of claims arising from insolvency? How does the insolvency regime interact with other laws?

The Bankruptcy Law and the Civil Procedure Code apply to the activities, rights and responsibilities of persons declared bankrupt, and restrict or prohibit the performance of certain actions.

Law stated - 31 August 2021

Procedure

What procedural rules govern insolvency litigation in your jurisdiction? What common procedural hurdles arise in practice?

The Bankruptcy Law and the Civil Procedure Code govern insolvency litigation. The most common problems relate to jurisdiction, when civil lawsuits are filed against the property presented by or against the bankrupt person. In some cases, the Bankruptcy Court must decide whether to consider the case or transfer it to a court of general jurisdiction.

Law stated - 31 August 2021

Courts

Which courts hear insolvency claims? How experienced are they with insolvency litigation?

The Bankruptcy Court hears insolvency claims. At the beginning of the court hearing, judges that are experienced in bankruptcy cases are appointed, which has a positive impact on bankruptcy proceedings.

Law stated - 31 August 2021

Jurisdiction

Through what law do the relevant courts have jurisdiction to hear insolvency claims? Does jurisdiction differ for domestic and cross-border matters?

The Bankruptcy Law and the Civil Procedure Code. The general rules regarding jurisdiction are the same for domestic and cross-border matters.

Law stated - 31 August 2021

Limitation periods

What limitation periods apply to bringing insolvency-related claims? Are there any notable exceptions?

The statute of limitations for bankruptcy claims is defined in the Civil Code , and there are no special rules for initiating bankruptcy proceedings. The total statute of limitations is three years; however, for some types of claims, the law may provide for shorter or longer periods.

Law stated - 31 August 2021

Interim remedies

What interim remedies are generally available and commonly deployed in insolvency proceedings? How are these used as part of claimants' overall litigation strategy?

The interim remedies available are submission of objections, appeals, dispute of separate claims and dispute of grounds with separate lawsuits. The main purpose is to prolong the stay of proceedings or certain actions.

Law stated - 31 August 2021

Evidence

What rules and procedures govern the collection and admissibility of evidence in insolvency litigation? To what extent is expert witness testimony allowed? What common evidential issues should claimants be aware of?

The rules of the Civil Procedure Code apply. An expert's opinion is generally not applicable in bankruptcy proceedings, except for financial analysis, but there are no examples of this in practice.

Law stated - 31 August 2021

Time frame

What is the typical time frame for insolvency claims?

From at least six months up to six years.

Law stated - 31 August 2021

Appeals

What are the requirements to appeal insolvency-related judgments? What is the typical time frame for appeals?

The rules of the Civil Procedure Code apply to appeals. The most common ground for appealing a judgment is that the norms of substantive or procedural law have been violated, such as not properly notifying one of the parties to the proceedings or not involving the interested party in the proceedings, which may affect the outcome of the case. In the case of judgments, the term of appeal is one month.

Law stated - 31 August 2021

Costs and litigation funding

How are costs handled and how are claims funded? Can claimants obtain third-party funding to finance the prosecution of claims?

The plaintiff or the applicant is liable to pay the court costs in bankruptcy proceedings if he or she does not mediate to defer them or to be exempt from paying them. The bankruptcy trustee is exempt from paying the state fee, but if an unfounded claim is rejected, the court will reimburse the court costs to the bankruptcy trustee. A person who has filed for voluntary bankruptcy is exempt from paying the state fee. Other expenses incurred in bankruptcy proceedings, such as property appraisals, are borne by the bankruptcy trustee.

Law stated - 31 August 2021

AVOIDANCE ACTIONS

Fraudulent transfers and undervalue transactions

What are the essential elements of avoidance actions seeking to claw back fraudulent conveyances and transfers? Can actions be brought for transfers without fraudulent intent based on undervalue of the transfer?

Lawsuits can be filed challenging fraudulent conveyances and transfers, even if they were made unintentionally but the outcome was that they significantly reduced the debtor's property or caused damage to the property. In both cases, a separate court case is initiated.

Law stated - 31 August 2021

Preference and improvement of position

What are the essential elements of avoidance actions seeking to claw back transactions and payments based on preference and improvement of position shortly before insolvency proceedings?

Sale of property, donation, conclusion of loans, settlement and concession of demand.

Law stated - 31 August 2021

Liens and floating charges

What are the essential elements of actions for the avoidance of liens and floating charges on subsequently acquired property?

Dispute of pledge agreements in separate lawsuits.

Law stated - 31 August 2021

Process and resolution of avoidance actions

Through what process are avoidance actions litigated? What procedural issues often arise and how are avoidance actions usually resolved?

Avoidance actions are litigated by disputing the documents underlying the grounds for bankruptcy and filing other claims in separate lawsuits.

According to the current regulations, a bankruptcy application will be rejected if the debtor in a court of general jurisdiction disputes the grounds on which the bankruptcy application was made (eg, if the debtor presents evidence to support its case, the bankruptcy application will be rejected).

Issues will arise if the debtor delays the fulfilment of obligations for several years or generally avoids fulfilment by concealing property. There are no mechanisms to avoid this within the framework of the Bankruptcy Law, though attempts may be made to mediate the claim or seize the debtor's property to avoid further concealment.

Law stated - 31 August 2021

CLAIMS AGAINST DIRECTORS, OFFICERS AND SHAREHOLDERS

Breach of fiduciary duty

What are the essential elements of a claim for breach of fiduciary duty against directors and officers in the context of corporate insolvency?

It is possible to file a claim for damages from directors and officers, including in cases concerning deliberate non-compliance with judicial acts.

Law stated - 31 August 2021

Protection from liability

To what extent does the law in your jurisdiction protect directors and officers from liability for decisions made in connection with the restructuring or insolvency?

Directors' and officers' actions in the field of property management or company management are limited.

In particular, the decision-making powers of directors and officers must be approved by the bankruptcy manager, and in some cases the manager concludes transactions without the permission of the court, manages the assets of the company and manages the property (eg, alienates it). The directors and officers do not have access to bank accounts and can only take very limited actions to maintain the normal operation of the company.

Law stated - 31 August 2021

Converting credit to equity

Can credit extended by an insider or shareholder be recharacterised as equity? If so, what is the mechanism by which such an action is brought, and what elements are required to prevail?

No.

Law stated - 31 August 2021

Illegal dividends

Can dividends received by shareholders be prosecuted as illegal?

No. According to the current regulation, shareholders have the right to receive the dividends available to them by law at the expense of the profit received by the company. The exercise of shareholders' rights may not be hindered by the fulfilment of other obligations of the company or by the mismanagement of the director. The Bankruptcy Law's provisions on causing damage to the company by the director will apply in this case. Dividends are considered the property of the shareholders, and the shareholders' expectation of receiving them is considered legitimate.

In addition, the distribution of dividends is considered a liability of the company and is not subordinated to other liabilities.

Law stated - 31 August 2021

Trading while insolvent

How is trading while insolvent treated in your jurisdiction? If actionable, what mechanisms apply and what are the elements of a successful claim?

The bankruptcy manager, personally or through the director of the company or through a trust manager, can ensure the normal operation of the company, including running commercial activities, making transactions, receiving money from the goods sold and transferring money to a bank account specially opened in bankruptcy proceedings. The manager will distribute these funds to ensure that the creditors' claims are met.

Law stated - 31 August 2021

Equitable subordination

Is equitable subordination of shareholder claims allowed? If so, what requirements and mechanisms apply?

The law provides for classification when registering shareholders' claims. These claims are ranked last, taking into account the priority of other liabilities. The shareholders present their claims in general terms, like the other creditors, presenting the grounds for the occurrence of the obligation.

Law stated - 31 August 2021

Other claims

Are any other claims commonly brought against shareholders, directors and officers in your jurisdiction? If so, what mechanisms are used to raise these claims and what elements are required to prevail?

Yes, claims for damages are filed mainly by the bankruptcy trustee or the creditor. A separate civil case is initiated for these claims. The claim must be based on the fact that the transactions or actions performed by the director were illegal, or were lawful in practice but had an illegal aim, such as evasion of obligations, which caused the company to go bankrupt (ie, were it not for those actions, the company would not have been declared bankrupt). This would be the case if, for example, the director of a company, knowing that the company does not have sufficient means to maintain normal operations, accepts a large loan from a third party that the company will not be able to repay within the period specified in the transaction.

Law stated - 31 August 2021

Risk mitigation

How can shareholders and sponsors mitigate the risk that claims against them will be successful, and minimise the accompanying financial burden?

Shareholders and sponsors can cooperate with the bankruptcy manager, provide all the necessary documents, stop performing the actions to the detriment of the company or refuse to execute the damaging contract.

Law stated - 31 August 2021

CREDITOR ACTIONS AND STRATEGIC CONSIDERATIONS

Contesting restructuring plans

Can creditors bring actions contesting the restructuring plan? If so, what law governs such actions? What must the creditor show to succeed and what must the debtor show to successfully defend? How are these actions usually resolved?

Yes, according to the Bankruptcy Law, creditors can contest the restructuring plan if they can prove that the obligations have not been, or cannot be, fulfilled, or have been fulfilled in violation of the law.

Law stated - 31 August 2021

Winding-up petitions

Do creditors apply for winding-up orders? If so, what law governs these actions? What must the creditor show to succeed and what must the debtor show to successfully defend? How are these actions usually resolved?

No.

Law stated - 31 August 2021

Stays of proceedings – scope and exceptions

Does the insolvency regime stay any creditor collection actions? If so, what are the parameters of such a stay? Are there any notable or commonly used exceptions?

Debt collection is suspended to the extent that the bankruptcy manager will collect debts at a later stage.

In this case, the confiscation of money from debtors is done by the bankruptcy trustee, who fulfils their obligations by filing lawsuits or through negotiations. The debt managers then distribute the proceeds of the debt collection to creditors.

The company director does not have the right to demand that anyone fulfil an obligation or file a lawsuit to extort money from the company's debtor. In bankruptcy proceedings, the direct transfer of money to the company for the purpose of fulfilling an obligation is prohibited without the consent of the bankruptcy manager or the court.

Law stated - 31 August 2021

Stays of proceedings – strategy

How do creditors navigate stays in practice? How do stays generally affect their litigation strategy?

The scope of creditors' powers varies according to their classification, which is provided for in the Bankruptcy Law. Creditors exercise their rights independently or through petitions submitted to the Bankruptcy Court.

Law stated - 31 August 2021

Stays of proceedings – effect on emergence from insolvency

How do stays affect the debtor's emergence from insolvency?

If the stay is so short that it has no significant effect on the bankruptcy situation, the debtor can still make payments. If the debtor's property is not enough to cover its debts, the bankruptcy proceedings will end (even if there is an outstanding balance) as the debt cannot be paid.

Law stated - 31 August 2021

Subordination and disallowance of creditor claims

Are the courts in your jurisdiction empowered to punish creditors' bad acts or inequitable conduct by pushing their claims down the priority waterfall? Can they void the claims altogether?

No.

Law stated - 31 August 2021

Vote designation

Can creditors be disenfranchised based on bad-faith conduct?

No.

PRE-INSOLVENCY DEBTOR CLAIMS

Available claims

To what extent can claims existing before insolvency be pursued against shareholders and their affiliates and agents during an insolvency proceeding – including any contractual, tort and misfeasance claims and claims for the recovery of company property?

Only claims for damages can be pursued against shareholders and their affiliates.

Law stated - 31 August 2021

Procedure and resolution

What procedural mechanisms and issues should be considered when bringing pre-existing claims? How are they usually resolved?

The rules of jurisdiction must be considered.

Law stated - 31 August 2021

Standing and assignment of claims

Who controls the pursuit of pre-insolvency debtor claims? Can creditors or other stakeholders pursue them derivatively if the debtor or trustee refuses to do so?

The director of the company controls the pursuit of pre-insolvency debtor claims, if he or she does not fulfil his or her duties by submitting a court motion.

In this case, the director of the company, receiving a request for fulfilment of an obligation, should examine its legality, be reasonable and start fulfilling it. If the director sees that the company's resources are not sufficient to fulfil the obligation, he or she must initiate bankruptcy proceedings and go to court to ensure that the financial condition of the company does not deteriorate further, the obligation can be fulfilled and the normal operation of the company can resume.

Law stated - 31 August 2021

Risk mitigation for creditors

How can creditors mitigate the risk that pre-insolvency debtor claims and remedies will be successful?

With restraints previously applied in other proceedings. In other words, the only mechanism to ensure that creditors' claims are satisfied in the future is to prevent the debtor from hiding or destroying its property; however, this protection mechanism can only be used once bankruptcy proceedings are initiated, so if property is seized in other proceedings, the company can be declared bankrupt on the grounds that foreclosures were imposed before the bankruptcy process began.

Law stated - 31 August 2021

Minimising costs for creditors

How can creditors reduce the costs of litigation associated with these claims? What procedures are commonly used?

There is no such possibility. The general rules for deferment or exemption of state duty apply.

Law stated - 31 August 2021

OTHER CLAIMS

Other claims against creditors

Are there any other major categories of claims that may be pursued against creditors during insolvency proceedings in your jurisdiction? If so, what are the essential elements of such claims?

No.

Law stated - 31 August 2021

Other claims against debtors

Are there any other major categories of claims that may be pursued against debtors during insolvency proceedings in your jurisdiction? If so, what are the essential elements of such claims?

No.

Law stated - 31 August 2021

CROSS-BORDER PROCEEDINGS

Parallel proceedings and international judgments

Are parallel proceedings and international judgments recognised in your jurisdiction? What are the requirements for recognition? Can recognition be challenged? On what grounds?

Foreign judgments are recognised within the framework of mutual assistance in Armenia, but they cannot be challenged.

Law stated - 31 August 2021

Judicial cooperation

To what extent if any will there be judicial cooperation with other courts in relation to insolvency proceedings?

Judicial cooperation is not possible.

Law stated - 31 August 2021

REMEDIES AND ENFORCEMENT

Remedies for debtors

What legal remedies are broadly available to successful debtor-claimants? Have the courts awarded any notable remedies recently?

There are no legal remedies in this regard.

Law stated - 31 August 2021

Remedies for creditors

What legal remedies are available to successful creditor-claimants? Have the courts awarded any notable remedies recently?

There are no legal remedies in this regard.

Law stated - 31 August 2021

Court enforcement mechanisms

What tools are available to the court to enforce its rulings? Are there any jurisdictional limits to the court's enforcement powers?

Rulings of the Bankruptcy Court are subject to the Compulsory Enforcement Service, a subdivision of the Ministry of Justice that ensures compulsory enforcement of judicial acts. There are no jurisdictional limits to the court's enforcement powers.

Law stated - 31 August 2021

SETTLEMENT AND MEDIATION

General court approach

Are the courts in your jurisdiction generally amenable to settlements?

Yes. Courts are considered the main legal dispute resolution body. Parties generally prefer to go to court to reach a final settlement in a dispute through a court judgment.

Law stated - 31 August 2021

Timing

When in the course of litigation are settlements most likely to be sought out?

Settlements can be sought out at any time during the case proceedings.

Law stated - 31 August 2021

Court review and approval

How do courts review settlements? What is the legal standard for entry into and approval of a settlement?

The Bankruptcy Court will verify that the settlement complies with the law and that it does not harm the interests of other persons. It will reject or approve the settlement depending on the outcome.

Law stated - 31 August 2021

Mediation clauses

Will courts enforce mandatory or voluntary mediation clauses in pre-existing contracts?

Yes, if the contract stipulates that the initial solution to the dispute is negotiations. The court will then determine whether there were negotiations and why it was not possible to resolve the issue through negotiations alone.

Law stated - 31 August 2021

UPDATE AND TRENDS

Recent developments

What have been the most notable recent developments in insolvency litigation in your jurisdiction, including any key cases and legislative changes?

The most recent cases have concerned the interpretation of the remuneration rules of the bankruptcy trustee and the initiation of lawsuits related to the debtor's property in parallel with bankruptcy proceedings. For example, case law stipulates that all cases in which the disputed property belongs to the debtor, or the debtor acts as a defendant or a third party, must be heard in the Bankruptcy Court.

Law stated - 31 August 2021

Jurisdictions

	Armenia	Concern Dialog Law Firm
	Australia	Blackwattle Legal
	Cayman Islands	.
	Cyprus	Patrikios Pavlou & Associates LLC
	France	Latham & Watkins LLP
	Germany	Latham & Watkins LLP
	Japan	Mori Hamada & Matsumoto
	Mexico	Mañón Quintana Abogados
	South Korea	Bae, Kim & Lee LLC
	Spain	Latham & Watkins LLP
	Ukraine	GOLAW
	United Kingdom	Latham & Watkins LLP
	USA	Latham & Watkins LLP