GENEVA GROUP INTERNATIONAL

FYI

GGI DCR NEWS

Debt Collection & Restructuring (DCR) Client Information Letter

# A new institution in Hungarian bankruptcy law

**By Dr. Attila Kovács**

A new institution has been introduced by the Hungarian legislator for bankruptcy law, with the aim of contributing to enterprises' reorganisation and debt settlement. It is known as the 'Major Economic Operator of Preferential Status (MEOPS)'. In cases defined within the Act, an economic operator may be classified as a MEOPS if it is engaged in the pursuit of activities that are deemed to be of strategic importance for Hungary's national economic purposes, including the implementation of projects that have been given priority for national economic consideration. An economic operator may also qualify by being involved in discharging public functions conferred by law nationwide. Qualification may also be awarded to economic operators whose activities may be considered of national importance for reasons of national security, defence, law enforcement, energy safety, environmental protection, public health considerations or any other reasons listed by the Act.

The Hungarian airline Malév, which has a significant history and is well-known, is one of the first companies to whose case this new legal institution has been applied.

The importance of the new institution is that special rules apply to MEOPS in cases of bankruptcy or liquidation, which should be applied if there is national economic or special public interest in coming to an agreement with the company's creditors, settling its debts, or performing a successful reorganisation. These special rules also apply in cases where there is a key economic interest in the termination without a legal successor and it is necessary to conduct the connecting procedure in a more transparent, standardised and faster way. Tasks in connection with the above are performed by a liquidator appointed by the State, whose primary goal is to keep the company's properties together and to ensure the company's operation. The MEOPS is not allowed to make payments without the consent of the liquidator. Such consent is given if the payment is necessary for the normal operation of the company or for pursuing its prioritised activities.

During liquidation, provided that the government decree qualified the company as a MEOPS, imposing the application of certain rules, enterprises enjoy protection

*...next page*

**New institution in Hungarian bankruptcy law has been introduced**

No. 01
Jan. 2013

for a certain period, which is similar to bankruptcy protection. This institution is called "special moratorium". During this time, special regulations ensure several guarantees for the MEOPS: in the case of Malév, the possibility of enforcing monetary claims on the company by recovery was suspended, securities could not be enforced in accordance with the law, and partners were not allowed to terminate and withdraw from an agreement previously concluded with Malév. The debtor is entitled to this protection from the filing of the petition initiating a liquidation procedure until the decision on liquidation is made and for an additional 90 days following the possible order on liquidation.

Another novelty of the regulation is the special sale of properties. The task of the liquidator is to sell the enterprise's properties and intangible assets at the highest price they can possibly achieve on the market. The liquidator may also conduct private sales – by certain guarantees – if there is public interest in selling the economic operator's properties as an operating company in order to ensure the company's uninterrupted and continued operation.

There is a significant difference in the process of the liquidation compared to other liquidations as well. For example, forfeit deadlines for notifications and for inspection times have been reduced (180 days to 120 days and 45 days to 40 respectively). Furthermore, time allotted for the preparation of the closing balance sheet has been shortened from two years to 270 days. Contrary to general rules, the debtor may not request a payment delay for the settlement of its debts.

The rules described above may only be applied if the Hungarian government qualifies the company as a MEOPS in a government decree within the deadline stipulated by the Act.

The practice which will develop in the future may answer questions such as how often governments live with this opportunity and with how much efficiency this can help national economy interests to prevail to a greater extent.

GGI member firm
**Kovács Réti Szegheõ Attorneys at Law**
Law Firm, Tax Consulting
Budapest, Hungary
T: +361 275 27 85
E: kovacs.attila@krs.hu
W: www.krs.hu

**Dr. Attila Kovács**

**Kovács Réti Szegheő Attorneys at Law** was established in 1992 and is one of the oldest independent Hungarian law firms. It is active in Hungarian, English, German and Italian and operates over a wide spectrum within the fields of civil and business law, for both domestic and international clients. Kovács Réti Szegheő Attorneys at Law has gained immersive experience in the fields of corporate law, mergers and acquisitions, construction law, real estate law, securities law, bankruptcy law, labour and employment (also including health & safety), competition law and intellectual property law. It also advises clients in matters related to the internet such as e-business and data protection, as well as advising on environmental protection, public procurement law and energy law.

**Dr. Attila Kovács** graduated from the Faculty of Law at Eötvös Loránd University in 1996. After gaining professional experience in Hungarian and German law offices, he is a member of Kovács Réti Szegheő Attorneys at Law, and has been Managing Partners since 2004. He is an arbitrator at the Arbitration Court that is attached to Hungarian Chamber of Agriculture, he is Chairman of the Geneva Group International's Insolvency Practice Group, and Chairman of the Zugliget Voluntary Pension Fund's Supervisory Board. Attila speaks Hungarian, English and German and his primary areas of practice are bankruptcy law, real estate law and corporate law.

KOVÁCS RÉTI SZEGHEŐ
ATTORNEYS AT LAW

## The European black insolvency hole

# The Danish non-recognition of foreign bankruptcies

**By Lars Berg Dueholm**

Denmark has been a member state of the European Union since 1973. However, in 1992 Denmark voted "no" to the Maastricht Treaty in a referendum and in 1993 a new referendum was only possible due to 4 opt-outs to the Treaty of Mastricht.

One of the opt-outs is in relation to legal cooperation in the EU. As a result, Denmark is not included in the EU Regulation on Bankruptcy Proceedings

**Danish creditors can seek satisfaction on an individual basis even though a foreign bankruptcy has been declared against the debtor**

(1346/2000). Furthermore, Denmark has not entered into any bilateral agreements regarding recognition of foreign bankruptcies – the Nordic countries excluded.

As a direct consequence, a ruling made in the past by the Danish Supreme Court finds that Danish creditors seeking satisfaction on an individual basis can do so even though a foreign bankruptcy has been declared against the debtor.

However, the consequences of this non-recognition vary between bankruptcies declared against judicial and physical persons. Even though a foreign bankruptcy estate does not exist in its own capacity according to Danish law, it is generally agreed that a foreign trustee-in-bankruptcy in a bankrupt company has the same powers as the management would have if the bankruptcy had not been declared.

This is derived from the fact that the regulation of the company's management is in accordance with the company's home country. If the bankrupt person is a living physical person, the trustee-in-bankruptcy's powers can only be exercised in Denmark according to power of attorney from the bankrupt person.

GGI member firm
**Hansen|Sønderby Law Firm**
Copenhagen, Denmark
T: +45 70 300 500
E: lbd@hslaw.dk
W: www.hslaw.dk

**Lars Berg Dueholm**

**Hansen|Sønderby Law Firm** is located in Randers, but opened an office this summer in the capital Copenhagen. Hansen|Sønderby specialises in a broad spectrum of business law, with a focus on EU regulations, real estate and insolvency proceedings. Among their clients are one of the top ten Danish banks, several large NGOs within the agricultural sector, along with many owner-operated businesses. Hansen|Sønderby is also expanding its network through cooperation with a Chinese law firm in order to serve clients in Denmark and China regarding mutual investments. One of the company's two founding fathers, attorney Per Hansen, is a long standing active member of Geneva Group International.

**Attorney Lars Berg Dueholm** specialises in insolvency law. He joined Hansen|Sønderby this summer after a position with the privately owned Legal Advisor to the Danish Government. Dueholm has a long track record of managing bankruptcy estates, and has worked in a series of cases on cross-border insolvency proceedings. Lars Berg Dueholm now heads the newly formed Hansen|Sønderby Copenhagen office, which is located in the historic city centre.

hansen|sønderby
Advokatfirma

Tired of hearing debtors' excuses?

# Debt collection – efficient prosecution of debts in Austria!

**By Christian Seidl**


One of the consequences of the current financial crisis is that an increasing number of invoices that remain unpaid. The reasons for this are manifold. Banks are tightening their lending criteria, loans become due, people lose their jobs, margins are lower and there is greater competition from abroad. The financial crisis leaves deep traces.

The increasing use of people's right to free movement inevitably results in an increase in the potential number of cross-border debt collection cases.Council Regulation (EC) no. 44/2001 simplifies the procedure for having a foreign judgment declared enforceable.

Many creditors try to recover their claims. According to Austrian jurisdiction, creditors are satisfied in strict accordance with the priority principle: the creditor who first attaches an asset takes precedence over the others.

It is therefore of great importance that enforcement of claims is mandated soon. The older a claim is, the more likely such a claim will become irrevocable.

Promptness and efficiency as well as consistent debt collection measures are therefore as important as keeping the enforceable claim on file and continuously informing clients about the progress, in order for them to assess whether pending claims need rectifications in their books. If, despite all measures taken, the claim remains irrevocable due to bankruptcy of the debtor, it is necessary to initiate applications for bankruptcy proceedings and attend the claim until its conclusion.

GGI member firm
**Tramposch & Partner**
Law Firm
Eisenstadt, Austria
T: +43 268 262 163
E: seidl@tramposch-partner.com
W: www.tramposch-partner.com

**Christian Seidl**

**Tramposch & Partner** is a boutique law firm with more than 28 years of experience in handling litigation and business law matters on a national and international scale. As a modern, proactive, forward-thinking law firm, Tramposch & Partner is firmly seated in the 21st century and offers unique and flexible solutions. Its three offices across Austria, based in Innsbruck, Vienna and Eisenstadt, enable Tramposch & Partner to provide comprehensive legal counselling as well as representation before Austrian courts and administrative bodies throughout the country.

Rechtsanwälte - Studio legale - Law firm
Tramposch & Partner

**Christian Seidl** is a partner at Tramposch & Partner and has been managing the branch office in Eisenstadt since 2005. He principally advises banks, leasing companies and insurance companies on the enforcement of their claims regarding tort and unjust enrichment disputes (court disputes/contentions). He specialises in the areas of litigation before state courts as well as administrative bodies, debt collection, insurance recoveries, insolvency law and banking law.

# Enforceable notarial deed

**By Dagmar Yoder**

In practice creditors, whether entrepreneurs or individuals, are often confronted with the unfortunate situation of a debtor being unwilling or unable to honour their debts. Filing an action with a court seems to be a last resort solution. The notion of time-consuming and costly judicial proceedings is naturally discouraging. An alternative solution can be found in an enforceable notarial deed.

Drawing a legal instrument (e.g. a loan agreement) in the form of enforceable notarial deed provides an effective execution title without the necessity of participating in any judicial proceedings. Such a notarial deed has to contain identification of the obligation, identifications of the creditor and debtor, the subject matter of the obligation and its maturity, legal cause and, most importantly, the debtor´s consent with direct enforceability of the obligation in the event of the debtor's failure to duly meet it in a timely manner.

A petition for the initiation of an execution proceeding on the basis of the enforceable notarial deed may be filed as of the first day in default, without any prior decision or approval of a court or any other public authority. Last but not least, it should be noted that the enforceable notarial deed is an execution title for collecting the principal sum and late payment interest (statutory or contractual).

**An alternative solution can be found in an enforceable notarial deed**

However, it does not substantiate collecting any contractual penalty or loan interest. With respect to these two areas, the creditor has to initiate a separate judicial proceeding.

**Dagmar Yoder**

GGI member firm
**Konečná & Zacha, s.r.o**
Law Firm
Bratislava, Slovakia
T: +421 254 418 470
E: yoder@konecna-zacha.com
W: www.konecna-zacha.com

**Konečná & Zacha, Attorneys at Law**, is a distinguished law firm operating in the Czech Republic, Slovakia, Romania, Bulgaria and Russia. Since 2000 it has been providing legal services to both international and local clients. It specialises in commercial law, especially in the fields of real estate law, dispute resolution, intellectual property, mergers and acquisitions, project financing and restructuring, energy, telecommunications, transportation and others. Furthermore, the firm also ensures qualified tax advisory services in all areas associated with the activities of its clients.

**Dagmar Yoder LL.M.** is an attorney at law registered with the Slovak Bar Association and is a partner of Konečná & Zacha, Attorneys at Law, in Bratislava. Dagmar joined the firm in 2004 and specialises in real estate law, project financing and the protection of economic competition. She has been essential in the preparation and realisation of acquisitions for significant development projects, has abundant experience in structured financing, real estate development projects and commercial leases as well as extensive experience in debt collection.

KONEČNÁ & ZACHA
www.konecna-zacha.com

# Debt collection practices in Japan

**By Seiichi Yoshikawa**

In Japan, the debt collection process is normally started by an attorney sending an official letter of demand for payment to the debtor. If this letter turns out to be unsuccessful, the creditor commences legal action. If the creditor has reason to suspect that the debtor may conceal the assets on which a subsequent court judgment can be enforced, it is advisable for the creditor to obtain an order for provisional attachment of the assets. Such an order is normally issued by the court without the knowledge of the debtor upon payment of a security deposit (usually one third of the claim, but can vary depending on the weight of evidence to support the validity of the claim) by the creditor, whose deposit will be refunded if the creditor wins the subsequent main suit. Japanese lawyers normally undertake a debt collection case if a retainer fee and a success fee are arranged. The former is charged up front and the latter upon recovery of the claim. Both are calculated on the basis of the amount involved. These fees are decided by the parties' agreement on a successive diminution basis, and are typically 5% (retainer) and 10% (success fee) if the amount involved is around US$100,000. A foreign judgment can be enforced in Japan by obtaining an enforcement judgment.

**Seiichi Yoshikawa**

GGI member firm
**Koga & Partners**
Law Firm
Tokyo, Japan
T: +81 33 578 86 81
E: yoshikawa@kogapartnerslaw.com

**Koga & Partners** is based in Tokyo, Japan. Its practice areas include international litigation and arbitration, finance, competition law, mergers and acquisitions, media law and general corporate matters.

**Seiichi Yoshikawa** is a senior partner of Koga & Partners and has handled many international litigations and arbitrations, including debt collection cases. He has served as Vice President of Japan Federal of Bar Associations and Councillor of the International Bar Association.

## An insiders' option throughout the United States

# Effective, one-stop, commercial debt recovery

**By Stephen D. R. Taylor**

Any company that has done business in the U.S. knows that recovering debt in an economy with over 50 legal systems poses substantial challenges. Non-U.S. creditors often conclude that they are left with a choice between shouldering the logistical burden of managing multiple U.S. counsel, bearing the cost of a national law firm, or of resorting to a lay collection agency (often on the basis that the debt will be written off if "amicable" collection fails). There is, however, an established alternative, although it is one of which few non-U.S. creditors are aware. A distinct type of U.S. boutique firm, commonly known as commercial law firms, evolved in direct response to this problem. These firms have been providing services to many businesses, large and small, for a long time.

Commercial law firms combine a low-cost infrastructure, often managing claims on a national basis from a single location, with national coverage managed through a single client contact. While they recover debt in their local area directly, their distinctive capability is to manage all recovery requirements, including bankruptcy proceedings, on behalf of the creditor in any U.S. jurisdiction necessary.

Any credible commercial law firm continually acts for its clients throughout the U.S. and should therefore be able to demonstrate a record of effective recovery. Contingency (success-based) fee options are common, and help to offset the cost fears often associated with American law firms. *Profile see next page*

**Stephen D. R. Taylor**

GGI member firm
**Kohner, Mann & Kailas, S.C.**
Law Firm, Management Consulting
Milwaukee, WI, United States
T: +1 414 962 51 10
E: staylor@kmksc.com
W: www.kmksc.com

Founded in 1937, **Kohner, Mann & Kailas, S.C.** is a business law firm. It provides legal counsel across the areas of law encountered by businesses in the course of their operations and growth. Their services range from high-profile appellate representation and international business issues to ensuring that critical everyday needs, such as debt recovery, are fulfilled efficiently and expertly. KMKSC is continually advancing the interests of its clients in negotiations, transactions, litigation and alternative dispute forums across North America and beyond. They also provide legal support and advice to foreign companies.

**Stephen D.R. Taylor** is a British national with nearly two decades of experience in European business and finance. Prior to becoming a lawyer, Mr. Taylor served on the boards of several companies. He has had direct responsibility for financial management and performance, including the establishment of revenues in the U.S. for non-U.S. based businesses. Since joining Kohner, Mann & Kailas, S.C., he has worked closely with their Business Litigation and International Debt and Asset Recovery practices, and provides strategic support to businesses involved in international transactions and dispute resolution.

# Debt collection in Cyprus

**By Melina Karaolia**

In a euro-crisis reality, when clients don't pay their dues, it means business and cash flow shrinks even further.

Debt collection in Cyprus is definitely a challenging task.

The process is usually initiated with a notice to the debtor. If there is no response, a claim is filed to the District Court that has jurisdiction. The claim is served upon the debtor who then has ten days in which to file an appearance before the Court.

If the debtor fails to file an appearance to the claim, the claimant will be entitled to proceed and request the court to issue judgment against the debtor, ordering payment of the debt plus interest and costs. The claimant will then take measures for the execution of the judgment, which may include, among others, the issue of a writ on movable property, the registration of the judgment on immovable property and initiating bankruptcy proceedings against the debtor.

If the debtor files an appearance to the claim, the case may be prolonged to allow the debtor to file a defence. Following filing of the pleadings, if no interim applications are filed, the case is set for instructions and hearing. Under these circumstances it may take a long time to issue judgment. It is important to seek proper advice, preferably from legal experts who can provide professional assistance with legal measures, having considered any credit assessment reports or asset investigation options available. Prompt action is required, as well as a wise choice of counsel and a legal advisor to initiate the debt collection process.

GGI member firm
**M. ELIADES & PARTNERS LLC**
**Advocates - Tax & Business Consultants**
Financial Audit & Accountancy Services, Tax Consulting, Law Firm, International Trust & Estate Planning
Nicosia, Cyprus
T: +357 22 66 77 30
E: mkaraolia@eliades.eu
W: www.eliades.eu

**Melina Karaolia**

**M. Eliades & Partners LLC** operates with a very clear and simple objective: to understand the needs of clients operating in the European and global environment, and to provide them with creative, timely and cost effective legal and advisory services. The firm serves a broad base of clients principally from the EU, but also from the U.S, Russia, Asia and beyond, while maintaining worldwide professional relationships through its membership with Geneva Group International.

**Melina Karaolia** is a partner at M. Eliades & Partners LLC. Her work encompasses a diverse range of corporate and litigation matters. She advises clients on a range of commercial, civil law issues and business law disputes. She is a member of the Chartered Institute of Arbitrators and the Association of International Petroleum Negotiators.

ELIADES & PARTNERS
Advocates - Tax & Business Consultants


**ARCs, banks and financial institutions in India can now enforce security interest in favour of secured creditors**

# Debt collection by banks and financial institutions in India

**By Sreeraj Ghosh**

Banks and financial institutions have been experiencing difficulties in recovery of dues from their Non-Performing Assets (NPAs) and enforcement of securities charged with them because of protracted legal hassles. For this reason, "The Recovery of Debt Dues to Banks and Financial Institutions Act, 1993" was enacted to facilitate faster recovery from NPAs. Subsequently, Debt Recovery Tribunals (DRTs) were established for dealing exclusively with debt recovery applications of banks and financial institutions. Debt Recovery Appellate Tribunals (DRATs) were also established and have now been functioning for more than a decade.

"The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002" came into force as of 21 June 2002. The Act has effect even if anything inconsistent therewith has been stated in any other laws during its time in force. The Act specifically bars civil courts' jurisdiction to entertain any matter, including granting injunction in all areas, which a DRT/DRAT enjoys under the Act referred to earlier as well as under this Act. Banks can float Asset Reconstruction Companies (ARCs) singly or as a joint venture with other players, or they can become a sponsor by holding no less than 10% of the paid up equity capital of a reconstruction/securitisation company.

ARCs as well as banks and financial institutions can now enforce security interest in favour of secured creditors without the intervention of courts/tribunals.

**Sreeraj Ghosh**

GGI member firm
**L.B. Jha & Co. Chartered Accountants**
Financial Audit & Accountancy Services, Tax Consulting, Management Consulting, Corporate Finance
Kolkata, India
T: +91 33 2230 28 29
E: sghosh@lbjha.com
W: www.lbjha.com

**L B Jha & Co** is a firm of Chartered Accountants and Management Consultants that offer a wide range of professional services based in three offices in Delhi, Mumbai and Calcutta (India). It has nine partners as well as a key executive team of seventeen Finance and Technical Experts with varied experience.

**Sreeraj Ghosh,** engineer-cum-MBA, had thirty years' experience in the industry and with financial institutions before joining L B Jha & Co. He has worked at the firm for more than six years, principally in the areas of enterprise valuation, pre-investment and feasibility studies, business and financial restructuring, etc.

L B Jha & Co
CHARTERED ACCOUNTANTS

# English Supreme Court rules on enforcement of U.S. and Australian judgments

**By Jeremy Lederman**

The English Supreme Court recently ruled on whether U.S. and Australian judgments in insolvency proceedings could be enforced in England (Rubin vs Eurofinance and New Cap Reinsurance v Grant 2012).

In addition to its own case law on enforcement of foreign judgments, England is party to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross Border Insolvency ("the Model Law"), which provides for recognition of foreign insolvency proceedings.

England also has its own statute for the cooperation with other countries in insolvency proceedings (including Australia). It also has another statute by which it recognises judgments in civil and commercial matters of certain countries (including Australia).

A U.S. judgment was obtained against parties. An Australian Court gave judgment against an English defendant who did not submit to the jurisdiction of the Court, but made a claim in the insolvency. The following is a very brief summary of the English Supreme Court majority judgment:

1. On policy grounds the English case law rules on recognition and enforcement apply, whether or not the judgment was in insolvency proceedings.
2. The Model Law could not be used for the reciprocal enforcement of judgments.
3. Co-operation does not include recognition of a foreign judgment.
4. Making a claim in the Australian insolvency was sufficient to give that court jurisdiction and make the judgment enforceable in England under case law as well as it being enforceable under statute.

**The English Supreme Court recently ruled on whether U.S. and Australian judgments in insolvency proceedings could be enforced in England**


**Jeremy Lederman**

GGI member firm
**Wedlake Bell LLP**
Law Firm
London, United Kingdom
T: +44 20 7395 30 00
E: jlederman@wedlakebell.com
W: www.wedlakebell.com


**Wedlake Bell LLP** is a leading London law firm with a long history and a modern approach. It provides a full service to corporate and private clients. It currently has over 125 fee earners. It provides a wide range of legal services to international and UK clients.

**Jeremy Lederman** is a partner at Wedlake Bell LLP. His practice areas are commercial litigation, arbitration, mediation and alternative dispute resolution. He leads the Commercial Litigation team at Wedlake Bell. A large part of his work has an international element and he frequently acts for overseas clients.

Wedlake Bell

# Collecting extra judicial costs in the Netherlands

**By Johan F. Langelaar & Michiel Teekens**

Creditors involved in international business can optimise their (legal) collection position by knowing and applying the (national) rules of extra judicial costs collection and by using a thorough debt collection service provider in the country in which the debtor is located.

From 1 July 2012, a new law was introduced relating to extra judicial costs that result from non-compliance with contractual payment obligations. The law regulates the amount of extra judicial costs through cumulative percentage fees.

The amounts of the extra judicial costs mentioned are binding to claims against consumers. Furthermore, the new law states that a statutory summons should be provided to the consumer after he/she is in default. If this statutory summons is not paid, the extra judicial costs become due and payable.

It is important to note that the proceeding described above is regulatory law in regard to company debtors. If the creditor has not covered the relevant issues in the agreement or the general conditions, the statutory proceeding will apply. It is therefore important for international creditors who have company debtors in the Netherlands to contractually optimise the extra judicial collection proceeding and costs.

The use of a law firm for the collection of claims and extra judicial costs is also recommended, especially when the claim is disputed. Quality debt collection leads to optimal collection results.

**A new law was introduced relating to extra judicial costs that result from non-compliance with contractual payment obligations**

GGI member firm
**TeekensKarstens advocaten notarissen**
Law firm
Leiden, the Netherlands
Johan F. Langelaar, Michiel Teekens
T: +31 71 535 80 50
E: langelaar@tk.nl
E: teekens@tk.nl
W: www.tk.nl

**Johan F. Langelaar**

**Michiel Teekens**

**TeekensKarstens lawyers notaries (TK)** is the largest legal services provider in the 'Rijnland' area, which is centrally located between Amsterdam, The Hague and Utrecht, and just fifteen minutes from Amsterdam Schiphol Airport. From its offices in Leiden and Alphen aan den Rijn, over fifty lawyers and (candidate) notaries operate and provide full service to mainly large and medium enterprises, (semi-) public sector and individuals, hailing from the Netherlands and beyond.

**Johan Langelaar** is a partner at TK and manages international affairs. He specialises in (international) commercial and business law, litigation and arbitration. He is also an arbiter himself. Johan Langelaar is Global Chairperson of the International Dispute Resolution Practice Group, and an active participant in the Debt Collection & Restructuring Practice Group.

**Michiel Teekens** is an (international) corporate and commercial litigator and active GGI participant at the GGI EasyMeets. He is also a member of the International Dispute Resolution Practice Group. Furthermore, he participated through GGI in the Global Village for the Move 2012 program.

# Brief introduction to Mexican bankruptcy law

**By Rodolfo Sánchez Arellano**

Mexico was one of the many Latin American countries that amended their bankruptcy laws pursuant to the recommendations of the UNCITRAL Model law.

Under the Mexican bankruptcy law, each case is assigned to a federal judge, who is assisted by specialists appointed by the Federal Institute of Reorganisation Specialists (IFECOM is the Spanish acronym), which was created for the sole purpose of guiding civil judges through the bankruptcy process.

In general, a case might have three phases: (a) bankruptcy trial; (b) reorganization, and if no reorganization is implemented, (c) liquidation. A civil judge, with guidance from specialists appointed by IFECOM, oversees these three phases from the outset.

A debtor is deemed to have generally defaulted on their payment obligations if:

**a)** a payment default has occurred with respect to the claims of at least two creditors;

**b)** payments are past their due after more than 30 days and represent 35% or more of all the debtor's payment obligations as of the date of the filing; and/or

**c)** the debtor does not have liquid assets to pay at least 80% of the obligations past due as of the date of the filing.

A debtor may commence a voluntary reorganisation proceeding if it satisfies condition (a) and either (b) or (c). A creditor or the Attorney General can file an involuntary reorganisation proceeding only if all three conditions are satisfied.

The law tends to promote cooperation and agreement, focuses more on reorganisation and since the beginning of the process, involves court-appointed officials. If this conciliation process fails, the debtor enters into liquidation.


**By Rodolfo Sánchez Arellano**

**Rodolfo Sánchez Arellano** is tax partner at New Corporate Approach, S.C., a firm located in Mexico City. He has more than 20 years of experience advising clients in corporate taxation, international taxation, cross border transactions and real estate and infrastructure matters.

GGI member firm
**New Corporate Approach, S.C.**
Tax Consulting, Law Firm,
Management Consulting
Mexico City, Mexico
Rodolfo Sánchez Arellano
T: +52 55 8421 9359
E: rodolfo.sanchez@nca.com.mx
W: www.nca.com.mx


NEW CORPORATE APPROACH


FYI GGI DCR NEWS

**Debt Collection & Restructuring (DCR) Client Information Letter**


## Contacts


**Geneva Group International AG**
Schaffhauserstrasse 550, P.O. Box 286,
8052 Zurich, Switzerland
T: +41 44 256 18 18
E: info@ggi.com
W: www.ggi.com
W: www.ggiforum.com

**Responsible Editor in charge of Debt Collection and Restructuring Contents:**
Dr. Attila Kovács
Chairman of the GGI Debt Collection & Restructuring Practice Group
Kovács Réti Szegheõ Attorneys at Law
Budapest, Hungary
T: +361 275 27 85
E: kovacs.attila@krs.hu
W: www.krs.hu


## Disclaimer

GENEVA GROUP INTERNATIONAL

# FYI

# GGI DCR NEWS

**Debt Collection**
**& Restructuring (DCR)**
**Client Information Letter**

**www.ggi.com**
**www.ggiforum.com**