

# ***Bankruptcy—Restructuring***

## ***Newsletter***

**The Athens Court of First Instance issues landmark decisions on pre-bankruptcy rehabilitation proceedings (in Greek: «εξυγίανση») of article 99 of the Greek Bankruptcy Code**

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27 August 2015

### ***1. Factual Background***

On 20 May 2015, the Athens Court of First Instance issued two landmark decisions in the context of a rehabilitation proceeding initiated pursuant to article 99 of Greek Bankruptcy Code (Law 3588/2007, as currently in force). Particularly, decisions 288/2015 and 289/2015 ratified the restructuring agreements entered into between two companies active in the construction business, namely the parent company “Babis Vovos International Construction and Co. Private Company” (“the Company”) and its subsidiary company “Babis Vovos International Construction SA” (“the Subsidiary”) on the one hand and their creditors on the other hand. In value terms, it is estimated that said restructuring is one of the largest in Greece to date, since the total debt of the two involved companies exceeds the amount of EUR 700 million. Also, in terms of substance, it entails an interesting blend of mutually complementary measures aiming at the restoration of the companies’ viability.

### ***2. Implementation of a complex, five-tier restructuring plan***

The implementation of the companies’ restructuring plan includes the completion of works in Votanicos area (shopping mall), the exploitation of real estate property in Galatas area (hotel establishment), the selling and leasing of various real estate properties and the further reorganisation of debt towards private and public sector. In essence, the plan is geared not only to the gradual decrease of the companies’ financial exposure, but also the improvement of its cash flow via the fruitful exploitation of its existing assets.

In particular:

- a. Spin-off of business and incorporation of new entity: The separation (by means of a spin-off) of the Commercial - Real Estate sector of the Company and the

incorporation of a new subsidiary will take place. Next, the real estate property of the Company in Votanicos area of an amount of EUR 120 million will be contributed “in kind” to such subsidiary.

- b. Debt Equity Swap: The total amount of shares of the above mentioned subsidiary will be transferred to Alpha Bank & Piraeus Bank, two major creditors of the Company, in partial satisfaction of their claims against the Company, namely EUR 153.2 million for Alpha Bank (standing for 25.3% of the claims) and 113.5 million for Piraeus Bank (standing 18.8% of the total claims). The two banks will in this way convert the said debt into equity (so called debt-equity-swap) and ultimately become shareholders of the subsidiary by 50% each.
- c. Selling and leasing of various real estate properties: The restructuring plan includes further the sale of various real estate properties of the companies including corporate, residential and hotel establishments. The Company’s debts towards banks, social security organisations, as well as the public sector of any nature not covered by the abovementioned debt-to-equity swap and the write down below (under (d)) will be paid by the said property divestitures. Regarding the payout timeline, debts towards the public sector are to be paid in 144 installments until 2018 and without surcharges, debts towards the Social Security Organization (“IKA”) in 180 installments until 2025, while debts towards other social security organisations within 2015. Apart from the said property sales another way to boost cash-flow is the leasing of companies’ property, in particular of 500 parking places and various warehouses from 2016 and forth. Additionally, the restructuring plan provides for the “transfer” of still usable building “coefficient” (licensed surface for building) to real estate properties owned by the Company, which will grant the Company the right to further develop its buildings and profit from such exploitation. This will in turn permit the companies to invigorate their core activities with a view to returning to viability and, ultimately, to profitability.
- d. Write-down of debt towards banks and public sector: For said restructuring plan to be completed and liabilities be accommodated, the write-down of debt amounting Euro 27.4 million towards Alpha Bank is required. Additionally, additional fees and increases imposed upon debts towards the public sector will similarly be written off. Further, the company employees under retention for a time period over 18 months will have to write down 20% of their outstanding claims and will be therefore compensated for only 80% thereof.
- e. Tax Clearance Certificate: For the above actions to be implemented, a Tax Clearance Certificate shall be granted by the competent tax authorities. By way of background, under Greek tax rules, such Certificate is essential for the transfer of the real estate properties to take place in the context of reorganisation and, by implication, for the clearance of the rehabilitation agreement by the Bankruptcy

Court. The novelty lies in the fact that the tax authorities consented to the issuance of the Certificate, despite the still outstanding debt of the companies vis-a-vis the public sector, which typically prevents such issuance. In this essence, the tax authorities' co-operation is not only noteworthy, but also welcome. Key factor for such deviation played of course the importance of the respective transfers for the successful implementation of the restructuring plan of the Company.

### **3. Final remarks**

The said restructuring agreements are compliant with the "collective satisfaction of the creditors" requirement of the Greek Bankruptcy Code, in the sense that they provide the best possible satisfaction of their claims when compared to their satisfaction in a winding-up scenario; if the companies went bankrupt and their assets sold on auction, it is estimated that creditors' claims of only EUR 53.8 million or 8.9% of the total claims would have been met. By these agreements, on the other hand, a percentage of more than 50% (EUR 315.6 million) of the creditors' claims is to be covered, while claims of EUR 288.8 million are to be written off. To be noted that the said agreements were ratified by the court after consensus of the 64.15% of the company creditors, thus meeting the requirement of a qualified majority imposed by law (60% of all creditors including 40% of all secured creditors).

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