

Recent legal framework governing the newly introduced profession of the Insolvency Practitioner and its functions

Current legal status

Until recently no Greek legal framework existed providing for the appointment of professionals with specialised knowledge and competence to administer the, quite often very demanding and complex, restructuring and insolvency procedures. The administration of insolvency estates was, and still is, entrusted to attorneys with at least five years of experience selected by the Insolvency Court (the “**Court**”) on the basis of a list drawn by the competent Bar for each calendar year. When a current list is not available, selection is based on the previous year’s list which remains in force and in case no such list is available at all, the Court will freely appoint the receiver in bankruptcy (administrator).

Introduction of a new legal framework

The Greek legislator, acknowledging the drawbacks of the current legal status, currently endeavours to establish the role of a regulated “Insolvency Practitioner”, in line with best international practices. In this regard, a legal framework providing for the necessary administrative formalities pertaining to such function has been introduced by Art. 51 of Law 4423/2016. According to the recent legislation entering into force on 1 January 2017, as it has been designed until today, the powers of a receiver in bankruptcy (an expert appointed in regular bankruptcy proceedings to administer the bankruptcy estate), mediator (an expert appointed in rehabilitation proceedings of Art. 99 et seq. of the Greek Bankruptcy Code to facilitate the negotiations between the parties in order to reach an agreement), special mandatee (an expert appointed in rehabilitation proceedings of Art. 99 et seq. of the Greek Bankruptcy Code to perform specific actions specified by the Court, e.g. supervise the implementation of the rehabilitation agreement) or special liquidator (an expert appointed in special liquidation proceedings of Art. 106ia of the Greek Bankruptcy Code to perform the transfer of the business as a going concern), will in the future be carried out by an individual or legal entity registered in a special register and qualified to act as Insolvency Practitioner. The current regime will apply until 1 January 2017, when a Presidential Decree will have entered into force following the issuance of a decision of the Minister for Justice, providing with a comprehensive and detailed legal framework on the new profession.

Establishing an “Insolvency Administration Committee”

In view of the above, an “Insolvency Administration Committee” will be established in the Greek Ministry of Justice, comprised of a chair and four (4) members, along with their substitutes. The Committee will be competent for keeping a register of Insolvency Practitioners and also for issuing, renewing and revoking the relevant licences of the Practitioners. The licence holders, while carrying out their obligations in relation to the administration of the cases with which they have been assigned, will be responsible for attaining the best possible outcome in each respective proceeding. Like under the current regime, responsibility will be primarily due towards the creditors for every loss caused to the insolvency estate, but the Insolvency Practitioners will also have legal, ethical and moral obligations towards employees, directors and other stakeholders of the insolvent person or entity. Further, the Insolvency Practitioners shall be personally liable towards third parties only for willful misconduct or gross negligence, without excluding tort liability. The Insolvency Administration Committee will be entrusted with monitoring adherence of Practitioners with the above mentioned obligations, while a Disciplinary Board, which is still to be established, will be responsible for applying measures in case of the Practitioners’ inappropriate conduct.

Rules for the issuance of Insolvency Practitioners’ Licenses

As Insolvency Practitioners will qualify those persons who will be selected in the context of a written national examination carried out by an Examinations Committee, competent to assess the professional competence of those seeking to carry out the functions of a licensed Insolvency Practitioner. Taking such examination will necessitate a considerable commitment on the part of the candidates, while the examinations will target the selection of the most suitable Insolvency Practitioners. The composition of the Examinations Committee, the required qualifications for the candidates to participate in the examination, and all related administrative and organisational matters are also to be designated by a Presidential Decree following a decision of the Minister for Justice.

To ensure that the required practical and technical knowledge requirements will be constantly met and that the Insolvency Practitioners will always remain apt to perform their duties without being subject to conflicts of interest, they will have to adhere to a still to be issued Ethics Code as well as to participate in continuing education programs, organised by certified training bodies. The terms and conditions of certification of such training bodies, of the relevant training methods and the trainers’ qualifications will be issued by virtue of a decision of the Minister for Justice. Under the current regime, there is no statutory requirement of participation in relevant training programs. Compared to the current legal regime, the introduction of the new legal framework is expected to bring about both the efficient operation of insolvency proceedings and an economically sound outcome.

Appraisal of the legislative initiative

In the international insolvency scene that is turning all the more complex, it is vitally important that insolvent legal entities and individuals be guided through the best options open to them, in order to resolve their financial difficulties in the most efficient way. As licensed Insolvency Practitioners will be trained in all aspects of the law and procedure, they will be best placed to provide respective advice and only they can act as supervisors of individual voluntary arrangements or as administrators in restructurings and bankruptcies. The above mentioned national legislative initiatives set the base for a solid regulatory background that can contribute to securing a higher performance of persons entrusted with the administration of insolvency proceedings. As mentioned above, a Presidential Decree will be published, providing a comprehensive outline of all fundamental principles governing the new profession of the Insolvency Practitioner in the Greek legal practice. A follow-up newsletter providing with all necessary information in this respect will be issued in due course.

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