

New Changes in Restructuring and Insolvency Law

Greece recently introduced Law 4446/2016, which includes important changes to domestic restructuring and insolvency law. The aim was to have in place key principles on preventive restructuring and “fresh start” frameworks, as well as on all types of insolvency proceedings, in order to improve their quality and efficiently tackle the accumulation of non-performing loans of ailing debtors. These amendments are to a large extent in line with the “Restructuring Recommendation” of the European Commission issued in 2014 (“RR”), pushing towards harmonisation with respect to Member States’ restructuring regimes.

Changes in Greek Restructuring Law

Providing for an efficient out-of-court restructuring (pre-pack)

Pursuant to Article 99 par. 1 of the Greek Bankruptcy Code (hereinafter “GBC”), as amended, the initiation of rehabilitation proceedings to negotiate an agreement with creditors following a formal court order is no longer an option. From now on, the debtor must commence restructuring negotiations at an early stage and without obtaining a relevant court order, with a view to reaching an out-of-court agreement with the required majority of its creditors. Once such majority has been reached, the agreement may be submitted to the Bankruptcy Court (“Court”) for ratification. This principle has been designed to reduce the inefficiencies associated with the in-court proceedings that were followed until the discussed amendments and also to avoid delays and risk of misuse of the proceedings by debtors who merely intend to gain protection from their creditors without having realistic prospects of viability.

Staying third-party enforcement actions

To promote efficiency of the rehabilitation proceedings an automatic stay of four months, subject to extension until the end of the proceedings, has been introduced on all individual and collective enforcement actions of creditors pursuant to Article 106 GBC. Such stay enables the debtor to prevent the piecemeal dismemberment of its business while the ratification of the rehabilitation agreement by the Court is pending. Pursuant to Article 106a GBC, a stay suspending the right of creditors to enforce claims against the debtor shall also be granted in the out-of-court “negotiation period”, that is, prior to the submission of the agreement to the Court for ratification, under the condition that creditors representing at least 20% of the total value of the outstanding claims issue a

written statement that they participate in the negotiations for the conclusion of a rehabilitation agreement. This is to ensure that creditors will not proceed to enforcement actions that might dissipate firm value and hamper the restructuring prospects of the debtor's business. Such a stay can be granted by the Court only once and for a maximum period of four months.

Protecting interim financing of the ailing debtor

Pursuant to Article 154 GBC, the qualification of the interim financing, providing with necessary financial recourses to support the operation of the business during the restructuring effort as debt with priority over other claims, is no longer limited to cases in which the rehabilitation agreement is finally ratified by the Court. This is intended to encourage investors to participate in the restructuring of the debtor's business, thereby enhancing the prospects of success of the rehabilitation.

Enhancing the integrity of the proceedings

In order to improve legal certainty and prevent the risk of abuse of the rehabilitation proceedings, Article 104 par. 6 GBC requires that the expert's opinion on the financial situation of the debtor and the viability of its business be drafted by an expert appointed by both the debtor and its creditors. Further, pursuant to Article 106c par. 3 GBC, a Tax Clearance Certificate essential for the implementation of the rehabilitation agreement shall be automatically granted to the debtor by the competent tax authorities upon the ratification of the agreement by the Court. Moreover, the stand-alone restructuring procedure called "special liquidation" (Article 106ia GBC) is being abolished as unnecessary due to its considerable similarity with other proceedings of the same scope.

Enabling creditors to initiate rehabilitation proceedings

Pursuant to Article 100 par. 1 GBC, a rehabilitation agreement may be drafted and submitted to the Court for ratification only by the creditors, without any participation of the debtor, provided that the latter has ceased its payments and that the required majority of 60% of the creditors' claims, 40% of which should be secured, has been met. This is to ensure that the pre-bankruptcy restructuring of a viable debtor may be implemented even when this is abusively hampered by the debtor for reasons extraneous to the restructuring.

Changes in Greek Insolvency Law

Defining new conditions for filing for bankruptcy

As to the opening of the insolvency proceedings, Article 3 GBC provides that, except for the case when the debtor has ceased payments or is in a situation where cessation of payments is imminent, bankruptcy proceedings can from now on be initiated when there is a likelihood of the debtor becoming insolvent and the latter submits to the Court, along with the petition in bankruptcy, a plan to reorganise its business as per Article 107 seq. GBC. This amendment has been designed to align

with the requirements for the opening of pre-bankruptcy rehabilitation proceedings under Article 99 seq. GBC. It should be noted that, under the GBC, reorganisation is possible in the context of bankruptcy proceedings that have been applied for, or that have already been initiated.

Providing for the Insolvency Practitioner

Pursuant to Article 63 GBC, a regulated insolvency profession is established in line with best international practice. Commencing from 1 January 2017, the powers of a bankruptcy administrator (receiver) may be carried on by an individual registered in a special register and qualified to act as an Insolvency Practitioner. Presidential Decree No.133/29.12.2016 provides for the necessary formal and substantive qualifications of Insolvency Practitioners, their appointment and termination, their special powers and duties, as well as their supervision and liability. For further information about the fundamental principles governing the new profession of the Insolvency Practitioner, please see our previous Newsletter of 10 October 2016.

Directors' liability for causing insolvency ("cessation of payments")

Pursuant to Article 98 par. 2 GBC, as amended, the directors of a limited liability company may be personally liable towards creditors for causing the debtor's "cessation of payments", defined as the company's inability to pay its debts, as they fall due, where the decision was a result of gross negligence or fraud. Until the discussed amendment, liability claims could be brought under the condition that bankruptcy proceedings against the debtor had already been initiated. In this vein, the opening of insolvency proceedings for triggering directors' liability is not required anymore, providing for a liability framework that applies even before the initiation of the insolvency proceedings.

Making insolvency proceedings more efficient

To improve the efficiency of insolvency proceedings and the restructuring option of the reorganisation plan included therein (Article 107 seq. GBC), the legislator proceeded to various changes with a view to a more flexible and quick procedure. In particular, the involvement of the Court in the process was confined to the extent necessary and proportionate, i.e. Article 114 GBC providing for the Court's competence to pre-examine a submitted reorganisation plan has been abolished and some of its approving authorities are attributed to the reporting judge, a more flexible supervisory authority of the proceedings. Furthermore, the "creditors' committee", an optional board supervising the progress of the proceedings and assisting the bankruptcy administrator during the performance of his duties, has been also abolished. Finally, the legislator provided for the shortening of the insolvency proceedings by making the timeframes for completion of various stages thereof even stricter.

Allowing for a full discharge of debts

Pursuant to Article 167 seq. GBC, as lately amended, the debtor may be fully discharged of its debts after two years as of the declaration of its bankruptcy as opposed to three years under the previous regime, provided that the debtor has acted in good faith, cooperating with the Court during the

proceedings and the insolvency was not a result of the debtor's fraud. Only then, and upon a relevant request, the Court may grant the debtor a "debt relief order" thereby enabling the debtor to make a "fresh start".

Final remarks

The above amendments should be seen as an effort of the legislator to establish a more efficient Greek insolvency and restructuring law by making it more flexible and attractive for the parties involved. Moreover, by aiming to reduce overall costs, the legislator has improved the quality of the insolvency framework and has struck a fair balance between the interests of the debtor and its creditors.

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