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Greece

RESTRUCTURING & INSOLVENCY

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Greece.

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GREECE
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1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Under Greek law, the securities provided to creditors depend either on the type of financing provided or the category of property owned by the debtor and are the following:

1. Mortgages/prenotations on immovable property: A mortgage is in principle concluded with a notarial deed or a court decision or by law and guarantees the completion of the security as soon as it is registered in the Land Registry/National Cadastre, whereas a prenotation is established upon the issuance of a court decision and represents a temporary mortgage, subject to both the final award of the claim and the abovementioned registration.
2. Pledges on movable property, rights and claims of the debtor:

(a) a pledge under the general provisions of Greek civil law, which is established on movable assets (including common shares) owned by the debtor, transferable rights and monetary claims and is concluded through a notarial deed or a private document with definite date. Physical delivery of the pledged item to the pledgee or to a third party is required for the completion of the pledge;

(b) a non-displacement pledge, which allows the establishment of a contractual pledge on the movable assets of a business. In this case, the physical delivery of the asset is not mandatory, but the agreement must be registered with the Pledge Registry (only then the pledge is effective against the contracting parties and any third party);

(c) a floating charge pledge, which corresponds to a pledge established over a group of variable movable assets or rights of the pledgor and allows the free disposal of the pledged items, provided that they are replaced with others of similar value. It is constituted with the same publicity regime as the non-displacement one;

(d) a pledge in favor of banks and leasing companies, which consists of a security imposed over the nominal claims held by a borrower against a third party. It is concluded, inter alia, through a simple private document (without definite date), but the assignment agreement must be served to the borrower;

(e) financial collaterals, which involve the establishment of a security over financial instruments (shares, bonds) issued by a legal entity, in favor of financial/credit institutions, investment services companies or insurance companies and permit the automatic acquisition over those instruments, if the claim is not timely satisfied. The establishment of such security is subject to a written (or legally equivalent) collateral agreement.

Failure to comply with the aforementioned requirements may lead, where appropriate, to the total or partial invalidity and/or unenforceability of the security.

2. What practical issues do secured creditors face in enforcing their security package (e.g. timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

The barriers that a secured creditor will face regarding the satisfaction of the security in the context of the Out-of-Court Workout (OCW), pre-insolvency and insolvency proceedings can be summarized as follows:

- Delays on the ongoing process: In the cases of pre-insolvency and insolvency proceedings (rehabilitation and bankruptcy), the issuance of the judicial decision, which is mandatory for

the initiation of the proceedings, might take longer than expected. Also, the availability of multiple remedies to the debtor and the time that elapses for these court hearings can significantly impede the course of both enforcement and insolvency proceedings.

- Suspension of individual/collective enforcement measures against the debtor are imposed upon relevant request, prior to the filing of a petition for ratifying the rehabilitation agreement or in the event of a petition for bankruptcy is included. Moreover moratorium against the continuation of legal proceedings or the enforcement of creditors' claims is also automatically established with the filing of the petition for the ratification of the rehabilitation agreement, the declaration of bankruptcy (with few exceptions for "in-rem" securities), or the submission of the application until the completion of the procedure in case of the Out-of-Court Workout (OCW) regarding the participating creditors.
- Legal Expenses: if the secured creditor is the one to initiate restructuring/insolvency proceedings against the debtor, he will be obliged to bear the corresponding costs for filing fees and service of documents to all persons with legal interests. Additional costs will be incurred in the filing of legal remedies regarding the final ranking.

3. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

Rehabilitation procedure:

Rehabilitation procedure is provided for legal entities with their center of main interests (COMI) in Greece who are in present cessation of payments or under threatened inability in performing their overdue financial obligations, or if there is simply a possibility of insolvency.

The rehabilitation agreement could be ratified by the debtor and its creditors representing at least 50 % of the creditors holding secured claims and at least 50 % of the rest creditors, with exceptions under specific prerequisites. Besides, the rehabilitation agreement may be ratified by the abovementioned creditors, without the debtor's consent, if the latter is under cessation of payments. Once signed, the agreement shall be filed before the competent local Court of First Instance for ratification. Whether the management continues to operate the business depends on the content of the rehabilitation agreement. However, it is provided that the court may appoint a Special Mandatee following a debtor's or its creditors' request and the issuance of the judicial decision ratifying the rehabilitation agreement. The role of the Court is purely validating. As for the other stakeholders, in any case what has been agreed in the rehabilitation agreement is applicable.

Out-of-Court Workout (OCW):

Any natural person or legal entity able to enter into bankruptcy, who owes over 10,000.00€ to financial institutions, the State and Social Security Institutions, can apply for debt restructuring via the Out-of-Court Workout (OCW) with exception of the persons/legal entities who have either filed a petition to enter into another restructuring or insolvency procedure or have been wound up (apart from the exceptions provided in the L. 4738/2020). Moreover, it is provided that a legal entity governed by private law that does not pursue an economic purpose but has an economic activity and owes over 10.000 € to financial institutions, the State and/or Social Security Institutions, may also apply.

This procedure is out of court. It is initiated at the request of the debtor on an electronic platform that operates specifically for this purpose. Following the debtor's request, the creditors evaluate the debtor's proposal, which may be approved by the majority of creditors (in terms of the value of the relevant claims) and at least the percentage of participating creditors with a special privilege. It is also noted that debt restructuring through the out-of-court procedure does not affect the debtor's management.

4. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

Rehabilitation procedure provides for interim or new financing to maintain the value of the business during the restructuring process or, respectively, for the implementation of the business plan after the restructuring. Pursuant to the Greek Law, strong incentives are provided for financing, since, in the event of the debtor's default, claims arising from any type of financing to the debtor to continue its business under a restructuring agreement, rank as superseniority claims and therefore are satisfied preferentially.

Furthermore, in the Out-of-Court Workout (OCW) debt refinancing is also provided, i.e. debt subsidy under special criteria set out by the law.

5. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

Under the current legal framework if a rehabilitation agreement is ratified, the rights of creditors against the guarantors and co-debtors of the debtor are not limited to the amount of the claim against the debtor, unless the creditor expressly consents thereto.

Moreover, in the case of debt restructuring under the Out-of-Court Workout (OCW), the Guarantors and co-debtors shall benefit from the agreement only if they have also applied individually for the Out-of-Court Workout (OCW).

6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?

Unlike bankruptcy, the Greek Law does not provide for the formation of creditors' committees in the Out-of-Court Workout (OCW) and in the Rehabilitation procedure. Therefore, in both restructuring procedures, advisory fees (e.g. meditator's – if there is such request by the debtor – or legal fees) will certainly be incurred which are mainly covered by the debtor, nevertheless there is no provision in the applicable law for any range on those fees. Especially in the Rehabilitation procedure, the Expert's fee for the drafting of the Report provided in art. 48 of L. 4738/2020, is explicitly provided that is freely agreed and is covered by the debtor.

7. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency proceedings upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

Any natural person/or legal entity pursuing a financial purpose (legal entities under public law, local authorities and public bodies are excluded, as well as any other person excluded by an express provision of law) may enter into insolvency/bankruptcy, upon filing a relevant petition. Such person/entity should be unable -generally and permanently- to meet his due financial obligations (cessation of payments). In case the bankruptcy petition is filed by the debtor himself the threatened inability in performing his overdue financial obligations is sufficient.

Under the current legal framework, a presumption (arguable) of cessation of payments is introduced. Therefore, in accordance with L. 4738/2020, a debtor is presumed to be in the state of cessation of payments when he fails to pay his overdue monetary obligations to the State, Social Security Institutions or Credit/Financial Institutions, at an amount of at least forty percent (40%) of his total overdue obligations for a period of at least six (6) months, if his defaulted obligation exceeds the amount of thirty thousand euros (30,000€).

It is also provided that if the bankruptcy petition of a legal entity is not filed in time – within a period of thirty (30) days from the date of entering such a state of cessation of payments, the members of the debtor's management who are responsible for the delay and who have the authority to file for bankruptcy on behalf of the legal entity shall be jointly and severally liable for the compensation of the loss of the corporate creditors.

8. What insolvency proceedings are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

According to the applicable L. 4738/2020 the main insolvency procedures are the following:

- small-scale bankruptcies, which concern the bankruptcy of very small legal entities, that meet the criteria of art. 2 of Law 4308/2014. In any case, entities whose turnover exceeds €2,000,000.00 are not considered as micro entities; bankruptcy petitions related to such entities are heard by the competent local Magistrate Court and are discussed in a simplified procedure.
- bankruptcies of all other natural persons/ legal entities. Especially for the legal entities the law distinguishes between the bankruptcy petition: a. with a request for liquidation of debtor's entire business or part of the business as a going concern or b. with a request for the piecemeal liquidation.

The bankruptcy petition may be filed by the debtor or the creditors (specific majorities of creditors are required

in case of a petition with a request for liquidation of debtor' s entire business or part of the business as a going concern) in case the debtor is under cessation of payments or the public prosecutor of the first instance, if such is required by reasons of public interest.

Bankruptcy is therefore declared by the court, which (through the rapporteur) also supervises the entire process, while the creditors' meeting is responsible, inter alia for the approval of the transactions in the context of the sale of the bankrupt's assets; for monitoring the Syndic's (Insolvency Practitioner) actions; for the conclusion of new contracts etc.

Following the issue of the court-decision declaring the bankruptcy, the debtor is automatically deprived of the administration (management and disposal) of its property, which is exercised hereinafter exclusively by the Syndic and represented exclusively by him, unless the competent Court, following the creditors' meeting consent, assigns to the debtor himself the administration of its property, subject to conditions and always with the Syndic's cooperation.

According to the provisions of L. 4738/2020 the bankruptcy shall be terminated within five (5) years from its declaration. However, the possibility of extending the bankruptcy proceedings is provided, by the end of the aforementioned five (5) years, only under special prerequisites. In the case of the liquidation on a going concern basis, the bankruptcy shall be terminated within 18 months of its declaration, provided that there is no pending bidding procedure and the Syndic proceeds to the sale of the debtor's assets, unless the creditors' meeting decides by majority vote to extend such bankruptcy procedure.

9. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Following the issue of a decision declaring the bankruptcy of a debtor, all enforcement measures against him shall be automatically suspended. However, creditors of the debtor, whose claims are secured by a security over the property of the bankrupt's estate, could initiate / or continue enforcement procedure on the assets of the debtor which secure their claims within nine (9) months from the declaration of bankruptcy. Nevertheless, in case that the bankruptcy judgment provides for the liquidation of debtor's entire business or part of the business as a going concern, the suspension shall also apply to creditors whose claims are secured, starting from the initiation of the bankruptcy proceedings.

It should be noted that, Greece as an EU Member State is a party of the Regulation (EU) No. 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, which allows in the event of a secondary insolvency proceeding to suspend in whole or in part the liquidation of assets following a request of the Insolvency Practitioner of the main insolvency proceeding.

10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorgnisation plan (if any)?

Creditors, as well as any affected party who holds claims against the bankrupt, after the declaration of the bankruptcy, have the right to file their claims within 3 months from the registration of the Court Decision in the Electronic Solvency Registry. Following their filing, they participate in the process of claims' verification. Creditors who did not file their claims within the abovementioned deadline, in order to participate in the claims' verification, may lodge an appeal within six months from the notification deadline, requesting the verification of their claims by the bankruptcy Court. In addition to the above and following the issuance of the Bankruptcy Decision, the creditors' meeting is constituted, which, among other things, approves the procedure's financing, the highest bidder of the debtor's assets, Syndic's additional remuneration (if any), the contracts' continuation, the replacement of the Syndic under specific prerequisites provided by the L. 4738/2020 e.a..

Furthermore, the creditors, who hold verified claims, have the right to challenge the creditor's table regarding their final ranking. Additionally, debtor's counterparties are affected by the bankruptcy regarding the validity of their contract with the debtor since the main rule is that all pending and continuing contracts of the debtor are terminated automatically and without prejudice, within sixty days following the declaration of bankruptcy, unless the Syndic decides their continuation. Finally, it is noted that L. 4738/2020 no longer provides the possibility of drawing up a reorganization plan of the bankrupt debtor in the contrary to the previous

legislative framework.

11. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities, DIP financing)? Could the claims of any class of creditor be subordinated (e.g. recognition of subordination agreement)?

Pursuant to the applicable L.4738/2020 the creditors' claims are categorized as follows:

- **Super seniority claims:** any financing or goods or services of any kind provided to the debtor aiming to ensure the continuation of its business and payments, on the basis of the rehabilitation agreement, or arising during the period of negotiations for a rehabilitation agreement, which may be up to six (6) months from the date of submission of the request for ratification.
- **Secured claims:** (i) arising from expenses for the maintenance of a movable asset, (ii) secured by a mortgage or prenotation over a property or by a pledged asset, and (iii) claims from production and harvesting costs of agricultural products.
- **General privileged claims:** including inter alia (i) hospitalization and funeral costs of the debtor and his family arising in the previous 12 months; compensation claims of persons suffering disability at the level of 80% or more, with the exception of moral suffering damages, arising until the auction date or the declaration of bankruptcy, (ii) claims pursuant to employment relationships and claims of lawyers entitled to a fixed periodic fee payment arising in the previous two years prior to the auction date or the declaration of bankruptcy (this time limit does not apply to claims of compensation for contract termination); claims of lawyers from legal services provided on a case-by-case basis to the debtor, arising in the previous one year prior to the auction date or the declaration of bankruptcy; claims of the Hellenic Republic in respect of Value Added Tax and any withholding or attributable taxes; claims of social security funds, as well as compensation claims in case of death of person liable for nutrition; claims of persons suffering disability at the level of 67% or more, arising until the auction date or the declaration of bankruptcy, (iii) claims by farmers or farming partnerships arising from the sale of agricultural goods during the previous year before the auction date or the declaration of bankruptcy, (iv) claims of the Hellenic Republic and municipal authorities arising out of any cause etc
- **Non privileged claims.**

Therefore, the creditors' claims in the event of bankruptcy are satisfied as follows:

1. at first the procedural expenses (inter alia legal, bankruptcy expenses, Syndic's fees) are deducted. In this case and according to the provisions of L. 4738/2020, any type of financing is included that the Syndic will receive in order to cover either the expenses of the procedure, or the business operation in case of liquidation of debtor's entire business or part of the business as a going concern.
2. following the deduction of the expenses, the creditors' claims are ranked as follows:

- Super seniority claims (if any) are paid in full and before any other claim.
- Then if there are creditors:

1. with general privileged claims, secured claims and unsecured claims, the bankruptcy proceeds are allocated: up to 65% to the secured creditors, up to 25% to the creditors enjoying general privileges and up to 10% to the creditors with no privilege.

2. with general privileged claims and secured claims, proceeds are allocated: up to 2/3 to the secured creditors; and 1/3 to the creditors enjoying general privileges.
3. with secured claims and no privileged claims, proceeds are allocated: up to 90% to the secured creditors; and up to 10% to the unsecured creditors.
4. with general privileged claims and creditors with no privilege, the bankruptcy proceeds are allocated: up to 70% to the creditors enjoying general privileges, and up to 30% to the creditors with no privilege.

It should be mentioned though, that pursuant to L. 4512/2018 and L. 4842/2021 in case of claims arising after 17.01.2018 secured by a pledge or a mortgage after 17.01.2018 (on an asset non encumbered by the aforementioned date), then the following -parallel – ranking system applies as well:

- First rank: Employees' claims that arose up to six (6) months before the declaration of the bankruptcy and up to an amount of six (6) monthly wages/employee;
- Second rank: Secured claims by a mortgage or mortgage pre-notation over a property or by a pledged asset or arising from expenses for the maintenance of a movable asset;
- Third rank: general privileged claims and claims from production and harvesting costs of agricultural products;
- Fourth rank: Non privileged claims

In the Greek Law, there is no concept for the subordination of claims.

12. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

Following the declaration of bankruptcy, acts carried out by the bankrupt-debtor within the "suspect period", i.e. the period from the cessation of payments to the declaration of bankruptcy, that are detrimental to the creditors are revoked/subject to "bankruptcy revocation" (in that case it is required that the counterparty could have or acknowledged that the execution of the transaction was detrimental to the creditors). It should be noted that acts carried out up to five (5) years after the cessation of payments are also revoked if it is proven that they were carried out fraudulently and with the intention of harming creditors.

The Syndic is entitled to apply for bankruptcy revocation in principle. However, under certain conditions, the debtor's creditors may also apply for bankruptcy revocation. A bankruptcy revocation may be filed by the Syndic within one (1) year after the revocable act has come to his knowledge and in any case within two (2) years after the declaration of bankruptcy. Whoever acquired the debtor's property by a revoked act is obliged to return it to the bankruptcy otherwise to pay relevant compensation. If the abovementioned acts are revoked by the court, any third party aggrieved by them, as long as he returns the bankrupt's contribution, is entitled to act against the bankrupt, requesting the return of his consideration – if it is saved in the bankrupt's estate- or otherwise he shall be classified on the creditor's ranking table.

13. How existing contracts are treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

With regard to the restructuring proceedings and especially rehabilitation process it is provided that both the filing of a petition for rehabilitation and its ratification cannot serve as grounds for terminating or denunciating pending contracts under the relevant contractual terms, to the extent that this event would be detrimental to the debtor. Although the Court can prohibit the denunciation of contracts until the rehabilitation agreement is ratified or rejected, if those contracts are presumed to be essential for the operation of the debtor. In any case, the fate of the contracts and their results are the subject of the provisions of the rehabilitation agreement. The Out-of-Court Workout (OCW) does not affect the debtor's contract.

In the case of insolvency proceedings, the main rule is that all pending and continuing contracts of the debtor are terminated automatically and without prejudice, within sixty days following the declaration of bankruptcy. Nevertheless, provision is made for the continuation of employment contracts and of contracts deemed so by the Syndic. It is noted that the right of the counterparty to denunciate the contract is not affected, both in contracts that include an automatic denunciation clause in the event of bankruptcy and in those of personal nature.

Another exception, where the Syndic is equipped with the right to decide whether to proceed with a contract or not, applies when the decision declaring bankruptcy provides liquidation on a going concern basis.

14. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

The procedural requirements for the liquidation of an entire business or its assets differ substantially in rehabilitation and bankruptcy proceedings.

In the case of a rehabilitation agreement the state of the assets/ entire business acquired by the purchaser can be specifically determined by the parties in the rehabilitation agreement, as its content is freely shaped and can include any agreement regarding the debtor's assets and liabilities. It is noted that the Out-of-Court Workout (OCW) does not provide any kind of sale either of an entire business or debtor's assets.

In insolvency proceedings, the conditions depend on whether there is a request for piecemeal liquidation or for liquidation of debtor' s business or part of the business as a going concern . Although both scenarios have as a common feature the existence of cessation of payments (or under threatened inability in performing his overdue financial obligations, if the petition is filed by the debtor), in the first case a petition for bankruptcy can be filed before the competent Court either by the debtor or one/more creditors and the liquidation is afterwards conducted through an electronic auction with a fixed first bid price. In the latter case, the petition should be filed by creditors representing at least 30% of the total claims against the debtor, including at least 20% of the secured claims and upon the additional condition that the debtor is not a very small legal entity. Then the sale of the business as a whole or of its parts as a going concern will take place through a public bidding process with no reserve price, subject to the prior approval of the creditors' meeting. In both scenarios assets that are secured or subject to any form of lien are transferred free of encumbrances and prior consent of the creditor is not required.

Therefore, the rehabilitation agreement is a form of pre-pack sale agreement. In contrast, the practice of credit bidding is neither common in practice nor provided for. However, it could be applicable in practice if there are no other bidders.

15. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor and if so can they be covered by insurances?

In the scenario of a distressed Company, the members of the executive body will continue to act primarily for the corporation and its financial well-being but also have the additional duty to consider the interests of the creditors as well. Therefore, they should refrain from actions that will incur liability, including inter alia: i. delays in filing for bankruptcy, which constitutes the special offence of inducing bankruptcy under the Greek Insolvency Law; ii. causing of the cessation of payments by the Company, as a result of fraudulent acts or gross negligence; iii. disappearance, concealment or depreciation of assets included in the bankruptcy estate; iv. participation in damaging or risky legal transactions of any kind; v. failure to keep compulsory commercial records, to draw up financial statements, to submit tax returns and to provide required information; vi. deliberate favoring of a creditor over others, through satisfaction of claims or provision of securities e.a..

The first two abovementioned actions entail civil liability, since those members will be obliged to compensate the creditors jointly and severally with the Company: a. from the reduction of the bankruptcy dividend which occurred because of the delay, and b. of which their claims were created during period between the thirty-first day after the cessation of payments and the subsequent submission bankruptcy petition. beThe rest are considered criminal offenses and result in imprisonment and fines. In any case the directors and officers could be personally liable in case they fail to meet the obligations arising from tax legislation, as well as tortious acts.

On the contrary, shareholders and creditors will be exposed to civil liability only if they exerted substantial influence on the members of the executive body and contributed to the first two results. Especially in the case of creditors, criminal liability can also arise if they conclude agreements advantageous to them and detrimental to the Company's assets. Moreover, pursuant to the provisions of L. 4728/2020, the Insolvency Practitioners, who act as Syndic or Special

Mandatee in restructuring and insolvency proceedings are liable, inter alia, for: i. any fault in case of breach of duty to the corporate creditors and the debtor, ii. malice against third parties and iii. malice in the event of the creation of a group debt which cannot be repaid. For this purpose, the Insolvency Practitioners have to take professional insurance, which will cover their civil liability regarding the exercise of their duties, in order to be able to accept their appointment as Syndic or Special Mandatee by the competent Court.

16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

According to the current legal framework, any natural person who, by virtue of being a representative or manager of a legal entity that is bankrupt, is legally liable jointly with it and is exempt from this liability only for certain debts. In particular, the exemption relates to debts incurred during the “suspect period” (i.e. the period from the cessation of payments to the declaration of bankruptcy), but the scope may be extended to include debts incurred during a timeframe of 36 months preceding that period or after 36 months following the filing of bankruptcy petition or after 24 months following the declaration of bankruptcy.

Nonetheless, the above exemption from the liability can be delayed if an appeal is filed by a person with a legal interest. The Court will not rule in favor of the exemption, **unless if specific prerequisites pursuant to L. 4738/2020 are met** and more specifically: (a) demonstration of good faith and proper cooperation with the bankruptcy institutions; (b) abstention from the acts or omissions, which give rise to civil or criminal liability under the Greek Insolvency Law and from the criminal offences of theft, fraud, embezzlement or forgery, in accordance with the Greek Penal Code.

However, in cases of conviction for criminal offences (such as: disappearance, concealment or depreciation of assets included in the bankruptcy estate; participation in damaging or risky legal transactions of any kind; failure to keep compulsory commercial records, to draw up financial statements, to submit tax returns and to provide required information e.a.), only partial and not full exemption may be possible for debts that are not directly linked to the offences in question. The scope of the provisions for exemption can also include persons who held the abovementioned positions in the past (before the declaration of bankruptcy) and representatives of a legal entity filing for bankruptcy or declared bankrupt under the previous bankruptcy regime.

17. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

Pursuant to Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, which applies to every EU member state, including Greece, it is provided the immediate recognition of judicial decisions opening restructuring or insolvency proceedings declared by foreign EU courts. In particular, any judicial decision initiating restructuring or insolvency proceedings before the competent courts of an EU member state in accordance with the above Regulation shall have direct effect in any other EU member state as long as no such proceedings are opened in that other state.

In addition, for the immediate recognition of these procedures is required that it concerns a restructuring or insolvency procedure listed in Annex A of the above Regulation (e.g Out-of-Court Workout (OCW) under Greek Law is not included in Annex A), while it is noted that each EU member state and therefore Greece has the right to refuse the recognition of the procedure or enforcing the relevant judicial decision in the event of violation of State’s public policy rules. It is also pointed out that the obligation to recognize international jurisdiction depends on the center of main interests (COMI) of the debtor.

Furthermore, the recognition of a foreign judicial decisions and therefore of an insolvency procedure, declared by foreign courts, is provided also in Greek Law 3858/2010, which adopted the UNCITRAL Model Law on Cross-Border Insolvency. However, it is noted that in this case the recognition of a foreign judgment declaring insolvency proceedings is not automatic, but requires a Greek judicial decision recognizing the foreign one.

18. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.

So far, no issues related to BREXIT and whether this has affected the recognition of English restructuring or insolvency proceedings have been recorded.

19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?

Pursuant to Greek Law and specifically L. 4738/2020, which has incorporated the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 it is provided that the debtors who maintain the center of their main interests (COMI) in Greece may be subject to restructuring or insolvency proceedings before the Greek Courts.

Furthermore Greece, as an EU Member State, is a party of the Regulation (EU) 2015/848, which provides the recognition of jurisdiction according to the debtor's (legal entity) center of main interests (COMI) or his establishment, in order to initiate a main or a secondary restructuring or insolvency proceeding. In this context, it can initiate before the Greek Courts either a main procedure concerning a debtor that has been incorporated abroad, but it is proven that his COMI is in Greece, or a secondary procedure as long as the said debtor, although his company has been incorporated and maintains his COMI abroad, maintains an establishment in Greece. Requirement in both cases is either the economic activity or the establishment to have been exercised for at least three months before the submission of the petition for the initiation of the main or the secondary procedure.

The abovementioned provisions are similar in a case of a debtor – natural person, where the condition of COMI is identified with the condition of the center of the main business / professional activity, while the above three-month period is extended to six months in the case of debtor – natural person. Thus, it is noted that in the event that a secondary insolvency procedure is initiated before the Greek courts, this procedure will be restricted to the debtor's assets situated in Greece.

As Greece has implemented the Directive (EU) 2019/1023 and is a party of the Regulation (EU) 2015/848 the same flexibility does not apply when non-EU countries are involved in restructuring proceedings in Greece (although reference should be made that UNCITRAL Model Law on Cross-Border Insolvency has been adopted by 58 countries, Greece included).

20. How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?

There are no explicit provisions for the possibility of a group of companies entering into restructuring or insolvency proceedings as a group. On the contrary, in this case each member company of the group is treated as a separate legal entity and may be enter into such procedure independently. However, given that the criterion of the center of main interests (COMI) is applied in Greece as well, it is extremely probable that each company member of the same group is under the jurisdiction of the same Court. Furthermore, there is no explicit provision in the Greek Law on cooperation between office holders. Each office holder must control and examine the course of the company to which he is appointed. All of the above still apply even after the entry into force of L. 4738/2020, which has incorporated the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019.

In any case, it should be noted that Regulation (EU) 2015/848 adopts regulations regarding the coordination of restructuring or insolvency proceedings, which concern companies – members of a group, their insolvency practitioners as well as the competent courts on a case-by-case basis. In this case the insolvency practitioner of a company – member of the Group is entitled, inter alia, to express an opinion on any insolvency proceedings of the other member companies of the Group as well as to request the suspension of any measure of sale of assets of the other companies of the Group.

21. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

The adoption of the UNCITRAL Model Law on Enterprise

Group Insolvency is not under consideration for Greece at present.

22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

The restructuring and insolvency framework in Greece had been changed radically two years ago by Greek Law No. 4738/2020 (Government Gazette A' 207/27.10.2020) titled "Debt settlement provision of second-chance and other provisions", which introduced procedures in harmonization with the provisions of the Directive (EU) 2019/1023. The abovementioned law was amended by laws 4818/2021, 4821/2021 and 5024/2023. At this time, as we are at an early stage of implementation of this new legal framework, no other changes are imminent. However, maybe more amendments will take place in the future in case the above-mentioned law does not fulfill its scope, or it is deemed to be necessary during its implementation for "fine-tuning" purposes.

23. Is your jurisdiction debtor or creditor friendly and was it always the case?

The jurisdiction in Greece historically is neutral, aiming on the one hand to protect the interests of creditors while on the other hand to protect vulnerable debtors. A typical example is the fact that through the provisions of Law 4738/2020 there are procedures such as Out-of-Court Workout (OCW), or/and through ratification of a rehabilitation agreement which give debtor the opportunity to successfully restructure its debts with the consent of the majority of its creditors by retaining the control of its business which becomes again viable ("going concern"). On the other hand, another option is provided to the creditors, according to which they have the opportunity to recover their claims against the debtor via the bankruptcy procedure, through the liquidation of debtor's entire business or part of the business as a going concern or on a piecemeal basis. Furthermore, the provisions of the previous legislation were similar regarding the Out-of-Court Workout (OCW), pre-insolvency and insolvency proceedings. Of course, despite the provisions of the Insolvency legislation creditors can always recover their claims via the procedures provided in the Greek Civil Code Procedure regarding common enforcement procedure.

24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the State play in relation to a distressed business (e.g. availability of state support)?

Insolvency/ Restructuring law is a law field which is affected by existing sociopolitical factors, since it has a great impact in the society and the economy. Thus, changes or amendments can occur as a result of sociopolitical factors' lobbying or pressure, as the State tries to balance between different interests and multiple stakeholders. A 10-year financial recession of the Greek economy, followed by a 2-year Covid19 extra-ordinary situation as well as the recent energy crisis, are taken into account by the legislator (e.g. during the pandemic of covid-19, the state introduced a bulk package of measures to facilitate debtors and businesses).

25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

One of the greatest barriers to efficient and effective restructuring schemes and insolvencies in Greece used to be the delay in the delivery of justice and bureaucracy. However, the procedures introduced by the new framework of Law 4738/2020, aim to provide a functional environment to formulate proposals for the settlement of debtor's debts and avoidance of debtor's insolvency risk. Its key features are the simplification of procedures for accelerating them, i.e. filing of the application for Out-of-Court Workout (OCW) by the debtor electronically to the Special Secretariat for Private Debt Management using the relevant Electronic Platform; the possibility of creditor's consent with regards to a rehabilitation agreement to be provided also by means of electronic voting; the creation of Electronic Solvency Registry which allows the execution by electronic means of communication the filing of claims; the e-publication of rulings; as well as the provision of conducting electronic auctions using the e-auction platform to secure the largest possible transparency and publicity. In addition to the above, the provisions of L. 4738/2020 were recently amended by L. 5024/2023 regarding the Out-of-Court Workout (OCW) procedure in order to: expand the categories of debtors that are subject to this mechanism as well as the categories of presumed as consenting creditors; eliminate the existing restrictions regarding the applicable debtors and debts; and in general, create a fully functional legal framework for the debtors.

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