

# All you need to know about becoming an Insolvency Practitioner in Greece.

GEORGE B. BAZINAS<sup>1</sup> & YIANNIS SAKKAS\*

## Overview

The Greek legal order does not contain provisions to establish and command the institution of Insolvency Practitioners (IPs). The administration and liquidation of insolvency estates is entrusted to the “syndic”, appointed on the conditions set out in the Greek Insolvency Code (IC)<sup>2</sup>.

## Requirements for the appointment of syndics

One of the key requirements imposed by the IC is that only attorneys at law can be appointed as syndics. **Article 63 IC**, lays down the necessary prerequisites for such appointment. According to the said proviso, a syndic must be (a) a lawyer, (b) with at least five years of practicing experience, (c) selected by a list drawn by the relevant Bar for each calendar year, based on the requests of interested lawyers.

When a current list is not available, the one of the of the previous year remains in force. If there are no such lists at all, then, the insolvency court decides freely on the person of the syndic.

Finally, it is also necessary that (d) the syndic must not be connected with the debtor. In cases where the debtor is a legal entity, the syndic must not be connected with the natural persons that constitute the management of the debtor company.

## The need for special knowledge and the mediators

Although other European jurisdictions have viewed favourably the benefits of specialised knowledge of economics and accountancy on the efficient operation of insolvency proceedings, the IC has taken a different stance. The Greek legislator did not deviate from domestic legal heritage, which dictates the exclusive appointment of lawyers on account of the complex legal challenges inherit to the insolvency procedure.

Nevertheless, the IC does make provisions for cases where the insolvency of a debtor requires special knowledge of technical, financial, accounting or other nature. In these cases, the syndic may instruct experts to assist him or the debtor in their duties (article 75, IC).

Pre-insolvency proceedings under the IC also show signs of departure from the strict line of article 63 above. In the abolished conciliation proceedings and in the recently adopted rehabilitation procedure, the appointment of a mediator is used as a tool to facilitate the conclusion of a workout agreement between the debtor and his creditors. In these cases the law does not exclusively reserve the appointment for the legal profession.

Also, according to article 102 (2) IC, the mediator is selected freely by the court, which takes into account the suggestions of the debtor or the creditors and does not necessarily come from the list of article 63.

## Right to refuse

The syndic is immediately notified of his appointment by the secretary of insolvencies. Within the next two (2) days as of such notification, the syndic is entitled to declare in writing that he declines his appointment, stating his relevant reasons. In the event that the grounds of refusal is not conflict, then the syndic who resigned may not be appointed for the next three years.

## The syndic’s civil liability

The syndic is liable against the group of creditors and the debtor for every damage caused in the insolvency estate by breach of the syndic’ obligations under the IC.

The syndic is also responsible against the above persons for all acts of a third party, to which the syndic assigned the administration of any case of the insolvency, provided of course that such assignment was outside the scope of the syndic’s rights and duties.

For cases where the syndic duly proceeded to such assignments, he is liable for the misdemeanour regarding the selection of the particular third party and for the instructions he gave to such person.

Apart from the group of creditors and the debtor, the syndic is personally liable against third parties only for malice or gross negligence. If a group debt created by the action of the syndic cannot be satisfied from the insolvency estate, the syndic is obliged to compensate the group creditor, if by gross negligence he failed to

diagnose that the estate is not likely to be sufficient for the satisfaction of such group debt or he diagnosed it, but neglected such finding.

In any event, the liability of the syndic under the law on tort is not excluded. However, any claim against the syndic is time barred after a period of three (3) years from the time the person suffering the damage became aware of the damage and of the damaging act. In any case the claim against the syndic is time barred following three years from the expiry of his office.

#### **The syndic's accountability**

The syndic prepares an accountability report within a month as of the termination of the insolvency procedure. The report is submitted to the Judge rapporteur and the creditors and the debtor are entitled to receive copies.

A meeting of creditors is then convened where the syndic presents the report and the creditors opine on the syndic's management of the estate. The debtor is also invited to attend the meeting.

#### **Syndics and the Penal Code**

Any misappropriation of moneys or other property of the insolvency estate by the syndic or by persons employed for the needs of the insolvency is punishable under the law on embezzlement, Penal Code (articles 375 et seq.)

At the same time, any false representation of a syndic in his report under article 70<sup>3</sup> or in subsequent reports, statements and memoranda, to the detriment of the debtor or the creditors is also punishable under the fraud provisions of the Penal Code (articles 386 et seq.).

Finally, syndics who dispose insolvency assets and acquire them for themselves indirectly through intermediaries are punished with imprisonment of at least three (3) months and a pecuniary fine equal to the double of the benefit gained.

#### **Regulatory body**

As already mentioned, there is no regulated insolvency practitioners profession in Greece. Nevertheless, the conduct of lawyers is governed by the Lawyers' Code and the disciplinary organs of the competent Bar to which each lawyer is registered.

#### **Syndic's remuneration**

The syndic is entitled to remuneration for his services, upon the closing of the operation of the insolvency in accordance with article 81 of the IC. To do so, the syndic must first provide an account of his management which has to be approved per article 165 of the IC.

The remuneration is determined freely by the insolvency court, following a report of the Judge rapporteur on the basis of the value of the insolvency estate, the time the syndic was occupied and the beneficial result of his activities to the interests of the insolvency.

The insolvency court may, upon application of the syndic and the rapporteur's report, provide provisional remuneration against the final fees above.

In both cases, the creditors committee may file a relevant report to the insolvency court based on the above criteria, i.e. the time the syndic was occupied and the beneficial result of his activities to the interests of the insolvency.

#### **Conclusion**

The role of syndics is at the core of Greek insolvency proceedings, with recent amendments entrusting them with further responsibilities. Despite the attempts of the IC to facilitate the appointment of experts in complex cases, the *modus operandi* and efficiency of proceedings will benefit from a regulated profession of insolvency practitioners with specialised knowledge in law, economics etc. At the same time, there is also room for improvement on the transparency for the appointment of syndics, including the need for the right of debtors and creditors to freely propose to the court IPs for appointment.

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<sup>1</sup> Name partner and head of the civil and commercial law seat at Bazinas Law Firm, 11 Alopekis Str, Athens, 106 75, Greece, [www.bazinas.com](http://www.bazinas.com) \*Yiannis Sakkas, also of Bazinas Law Firm.

<sup>2</sup> A full English translation of the Greek Insolvency Code is available at <http://www.bazinas.com/uploads/e802d00926c2607fb1e09252f72dcece.pdf>

<sup>3</sup> The syndic is obliged to submit to the creditors meeting a report on the financial situation of the debtor and the causes of the insolvency, the prospects of preserving the business, in whole or in part, its potential viability and the possibility of the debtor's entering a reorganization plan and the applicable projected consequences as regards the satisfaction of creditors.