



- [Transnational Insolvency Proceedings in Greece: Law 3858/2010 Adopting the UNCITRAL Model Law](#)
- [Recent International Headlines Can be Found Online](#)
- [International Webinar Now Available on the eLearning Site](#)
- [Save the Date - Mexico City Symposium on November 7](#)
- [Get the Most from Your ABI Membership When You "Discover ABI"](#)
- [The International Committee is Seeking Authors](#)

Transnational Insolvency Proceedings in Greece: Law 3858/2010 Adopting the UNCITRAL Model Law

Written by: **Yiannis Sakkas**
Bazinas Law Firm; Athens, Greece

Greece has traditionally been a forum willing to recognize, and give legal effect to, foreign insolvency proceedings, having a clear tendency toward the principle of universality that underpinned the attitude of domestic courts and the operation of cross border insolvencies in Greece. In the absence of specific statutory provisions, rules of private international law were used to govern jurisdictional issues and matters pertaining to recognition. This ellipsis in the Greek legislative framework was redressed in 2010 with Law 3858,^[1] which enacted the UNCITRAL Model Law on cross-border insolvencies. Together with the EU-adopted provisions in the form of Regulation 1346/2000 (the "EIR") *vis-a-vis intra-European insolvencies*, the Greek legal order now encompasses all cases of supranational default.

Although Greek courts have historically been capably handling cross-border insolvencies with the liberal and flexible approach described above, the Greek legal order is now aided by the codification of the principles governing (both *intra* and) *extra-European insolvencies* in the form of Law 3858. This codification affords a greater degree of certainty in the applicable law, with the additional benefit of extensive cooperation provisions that improve the operation of multi jurisdictional proceedings.

The legislators steered clear of the U.S. Bankruptcy Code approach and elected not to adopt Law 3858 as a chapter of the Greek insolvency code (IC). Instead, it was introduced as a separate law, effective as of July 1, 2010. Perhaps this was a conscious decision to avoid the unnecessary procedural perplexities that a direct association with the IC would entail. At the same time, this may mark an effort to distinguish the provisions of Law 3858 on the basis of their international origin and the need to maximize the efficient operation of the Model Law, albeit the particularities of national provisions.

For example, when Greek courts are presented with an application for recognition of foreign proceedings, the rules regarding the furnishing of evidence have less-rigid requirements compared to ordinary proceedings under Greek law. This affords the court the leeway to accept the documentation that it deems appropriate on the existence of the foreign proceedings and the appointment of a liquidator in the absence of the evidence specifically listed in article 15(2) of Law 3858, and even to accept documents in their original language. This is a substantial departure from a highly codified judicial system accustomed to strict procedural adherence. Although there has not been much case law so far, the experience at the early stages of perhaps the very first case currently going through the courts (unreported) suggests that the judiciary is ready to assume the responsibilities dictated by the multi-jurisdictional nature of proceedings.

That is consistent with the interpretational proviso of the Model Law, which makes explicit reference to the need to promote uniformity in its application and the observance of good faith. This principle is also repeated in Law 3858. In fact, the Greek legislation has followed almost to the letter the Model Law, deviating only in very limited cases for reasons of coherency with the IC. Law 3858 also amalgamates new terms in the existing terminology in the field, while trying to remain loyal to the legal heritage of insolvency law principles in Greece. For instance, foreign proceedings under article 2^[2] of Law 3858 are considered proceedings having two main pillars, first the debtor's insolvency and second the partial or total divestment of the estate. This is very similar to the wording of article 1(1) of the EIR, effective in Greece as of May 2002. Nevertheless, the Model Law offers a definition with a somewhat broader scope, making reference to proceedings pursuant to a law relating to insolvency in which the assets and affairs of the debtor are subject to control or supervision by a foreign court^[3]. However, the discrepancies in the text of article 2(a) between the Model Law and Law 3858 are justified, otherwise the definition of foreign proceedings for *extra-European insolvencies* under Law 3858 would differ from the equivalent text governing *intra-European cross-border cases* in Greece under the EIR. In any case, the deviation of the Greek law from article 2(a) of the Model Law is not expected to have much practical significance in the operation of the Model Law in Greece.^[4]

In line with this spirit of efficient operation of the Model Law, the Greek legislation did not make the applicability of domestic cross-border insolvency provisions dependant on a reciprocity requirement, as other states have elected to do. On the contrary, in article 27 of the Model Law, where the text invites the states to add to the existing forms of cooperation, the Greek legislation has expanded on those provided, making reference to the communications between the liquidators appointed in cases of concurrent proceedings, particularly as regards the status of the procedure for the announcement and verification of claims or any reorganization attempts and the particulars of the debtor's assets.

Furthermore, Law 3858 also fills a vacuum in domestic law as regards the exchange of information when the Greek judiciary is not in the receiving end of the request. Article 25(2) offers national courts the right to contact directly foreign courts and foreign liquidators in order to collect information in relation to proceedings pending in Greece. Although Anglo-Saxon jurisdictions are more familiar with these forms of cooperation, it is doubtful whether Greek courts would have assumed standing to make similar requests given that this authorization was lacking in the absence of the explicit reference in article 25.^[5] This still does not form an obligation of the Greek judiciary but merely a right exercised upon its discretion, and perhaps some time will be required before the full potential of this provision is explored. The same also applies for article 27(d), which makes reference to the approval or implementation by courts of agreements concerning the coordination of proceedings, resembling the protocols of cooperation between the U.K. and U.S. judiciary in cross-border insolvency cases.

Law 3858 has made efforts to provide a legislative framework that builds on the existing pro-recognition mentality of the Greek judiciary and which, with the assistance of all actors involved in cross-border insolvency cases, could in effect promote the efficient operation of cross-border insolvency proceedings within its scope while still keeping in line with Greek insolvency law principles. Much of this burden falls with the judiciary that will need to interpret the provisions of the new law in conformity with its international heritage, particularly when faced with requests that are at the core of disputes in the context of cross-border insolvencies, such as setting aside antecedent transactions. The approach taken by the Greek courts in the past, together with the very limited signs so far, are reassuring for the efficient operation of transnational insolvency proceedings under the UNCITRAL Model Law.

1. Law 3858/2010, SG A' 102/2010.

2. Greek legislation has maintained the same number of articles as the Model Law, thus facilitating the use of the law by foreign practitioners and courts, and thereby promoting its efficient operation.

3. Article 2 (a), Model Law.

4. E. Perakis, *Insolvency Law*, Nomiki Bibliothiki, 2010, page 429, see fn. 42.

5. L. Kotsiris, *Insolvency Law, Eighth Edition*, Sakkoulas Publications, page 90.

[Committee Officers](#)

[Upcoming Events](#)

[Contribute to the Newsletter](#)

[ABI World](#)

[Newsletter Archives](#)

[Global INSOLvency.com](#)