INSOL WORLD

The Quarterly Journal of INSOL International

Third Quarter 2010

US$25

The Recent Reform of the Greek Insolvency Code: Legislative Response to the Economic Crisis

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Even the most insightful Cassandras could not have predicted that the Greek insolvency code, ("IC") which was introduced in 2007 after decades of nomothetical apraxia, would be revisited in such short period. Despite that there has not been sufficient time to allow all the deficiencies of the legislation to surface, the pathology of the Greek economy has indubitably accelerated the need for a limited legislative reform of the Greek insolvency regime. In June 2010, the Parliament has in fact enacted legislation to this effect.

The adopted amendments are predominately epigrammatic supplementations of existing provisions, effective as of the date the law will be published until 31/12/2014, at which time they will cease to be in force. This is illustrative of the government's intention to facilitate the efficient operation of insolvency proceedings, on account that the financial conditions in which the IC was enacted, are so vastly different from the economic climate for which it was intended.

The executed reform affects in its most part the operation of insolvency mediation (article 99), a procedure resembling court ratified debtor-creditors workouts commonly found in comparative law. Emphasis is placed on the extension of time limits under present legislation for the negotiation of article 99 workout plans, further extending the maximum duration of such plans and the moratorium period on collective proceedings against the estate.

Under article 100 (1) IC, providing that the court deems the opening of insolvency mediation expedient, a mediator is appointed for a period of two months with the aim of assisting the parties in the conclusion of a settlement agreement, which is then entered to court for ratification. As for the time the amendments will become effective, this period will be extended to four months. On first reading, this may not seem as a substantial change in the operation of article 99 proceedings. However, this is a very critical proviso that requires careful consideration.

Insolvency mediation is envisaged as a measure preventive of the opening of full insolvency proceedings, applicable only to debtors not technically insolvent but in a present or anticipated financial distress. The requirement of solvency is a necessary prerequisite in all stages of article 99 proceedings. This acquires particular importance in light of the amendment of article 100 (1) IC, considering that debtors have constantly faced difficulties to meet obligations, even in the two months period under the current provisions. Considering the urgency to restructure liabilities, a prolonged mediation process could infringe the debtor's ability to service debt and in effect render article 99 proceedings inapplicable.

However, frustrating payments of matured obligations in a general and permanent way is not merely grounds for the rejection of the plan by the court. The debtor is statutorily obliged, under civil and criminal penalties, to file a voluntary insolvency petition within fifteen days as of the occurrence of the cessation of payments. This obligation cannot be waived by the court like for example under Spanish insolvency law provisions where technically insolvent debtors may be relieved from such requirement for four months when negotiations have commenced in order to get creditors to adhere to an early arrangement proposal.

Additionally, the two months time barrier has proven in practice an effective negotiation leverage for debtors to convince creditors to agree on a proposed workout. This was particularly appealing to creditors holding collateral, the value of which depended on preserving value in the company, as oppose to collateral over individual, usually immovable, assets that depreciate less in case of liquidation proceedings.

Of course, the law does not preclude the conclusion of the workout arrangement at a time earlier than the statutory limit of four months. In fact, diligent debtors would have negotiated possible solutions with key creditors prior to filing a petition. In any case, upon the inception of proceedings, the court appointed mediator has a duty to assist the parties in the negotiation process. The IC provides for a mediator's fee of €5000, which is deposited at the time of filing the application for proceedings under article 99.

However, the extension of the prescribed mediation period to four months was not followed by a statutory increase in the mediator's fees. This is in line with the effort to minimize cost for the said procedure, but could have an impact on the quality of candidates listed with the court to provide services as mediators. Most importantly though, pursuant to the executed amendments, in cases where the mediator resigns, the insolvency court will *ex officio* declare the termination of the proceedings. To avoid the abuse of the above provision and the adverse effect on the overall operation of article 99 proceedings, there is an express reference to the mediator's liability for compensation under the Greek Civil Code of procedure rules (art. 386).

The extended negotiation period of article 101 IC may have a further impact on the operation of insolvency mediation. The inception of article 99 proceedings do

not result to an automatic stay given that the law provides for a moratorium, now extended from six months to one year, only upon court consummation of the workout agreement. The maximum duration of the workout plan is also amended and is now four years instead of two under current provisions.

However, until the plan is filed for judicial ratification, the court can issue at its discretion provisional orders to prevent actions against the estate. Nevertheless, under the reformed provisions, such injunctive relief expires after the lapse of two months from the time it was issued and cannot be further extended. Although, this is aimed at dissuading parties from using article 99 proceedings as a means of keeping businesses afloat, it will however burden genuine debtors with the additional cost of petitioning the court for a new provisional order in cases where the two months period has not sufficed for the conclusion of a workout plan. This is not a distant possibility, given that the legislator decided to extend the mediation period to four months.

Finally, the only amendment in respect of provisions governing the restructuring of the business through reorganisation proceedings is limited to the minimum statutory percentage of recovery under a reorganisation plan. The IC provides that a restructuring plan can be filed either concurrently with the petition for the inception of insolvency proceedings or within a period of 120 days as of the opening of insolvency. Under current provisions, the plan could not propose a reduction of claims to less than 20%. This percentage was payable within a maximum period of one year. The executed reform has reduced the minimum recovery to 10% further increasing the stipulated repayment period to three years.

What remains is for the parties to an insolvency to embrace these amendments in a way that will facilitate this objective.

The focus of the legislative reform on insolvency mediation demonstrates the governments attempt to enhance the operation of this institution, in the hope that it will act as an effective and efficient tool in dealing with corporate financial distress in the present challenging times. What remains is for the parties to an insolvency to embrace these amendments in a way that will facilitate this objective. In any case, the timely legislative response to the changing economic environment is a positive development to which this field of law was not accustomed in the past. Actually, the reform of the IC was part of a Bill that successfully went through the Parliament on the adoption of the UNCITRAL Model Law on Cross-border insolvency proceedings, a further indication of Greece's attempts to rise to the challenges ahead.