RECOVERY

Manufacturing

What's the future in these uncertain times?

The future shape of business
Future security requires a sustainable recovery

Tough trading conditions for manufacturers
What are the options?

PRC manufacturing: lessons for foreign investors
A new law could help creditors

Madoff and asset recovery issues
International issues are not plain sailing

A modern Greek tragedy
Will the economic cloud have a silver lining?

Interview Steven Law

Plus Legal update, Recent case summaries, Technical update and Legal Q&A.

A modern Greek tragedy: the cross-border insolvency perspective

Will the economic cloud over Greece have a silver lining?

The present fiscal and financial position of the Greek state requires no introduction. The crisis of the Greek economy is well documented both in the press and most importantly on the balance sheet of corporate entities. The current financial health of Greek companies signals a broader concern, one that surmounts the prospect of default for a comprehensive number of domestic corporations and expands, amid nervousness, to a possible contagion of the member states with which Greece maintains strong financial ties. In a parallel convergence of factors, Greece could fit the profile of a regional magnet forum and could become the epicentre of cross-border insolvency proceedings, with the potential of a larger volume of transnational cases than otherwise expected.

One of the parameters endorsing such an eventuality is Greece's foreign direct investment in Southeast Europe, the result of a grandiose effort to infiltrate developing economies with high yields of return. It is estimated that the stock of Greek capital in the Balkans is over €7 billion, making Greece one of the largest investing countries in the Balkan states. The relatively recent European enlargement further propagates this prospect on the premise that Greek courts, under set conditions, could *de jure* assume jurisdiction over insolvency proceedings instigated in the new EU entrants in the region[1].

New Greek insolvency code

Profoundly reformed, the new Greek insolvency code (the IC) was never more adequately equipped with theoretical context to facilitate the efficient operation of complex cross-border insolvencies[2]. The current legislative framework has parted from the adverse practices and hereditary remnants that have limited its scope in the past. By the paradigm of modern nomothetical provisions, insolvency proceedings are no more statutorily reserved for merchant debtors and can now be instituted against unions pursuing an economic activity, to avoid the possibility of certain legal entities being immune from insolvency and to prevent the concealment of assets. To further broaden the scope of proceedings, the IC provides means of early recourse, affording debtors the prerogative to instigate proceedings, on the basis of a foreseeable inability to satisfy obligations, in addition to the cessation of payment grounds existing under the previous legislation. Evidencing its rescue ethos, the IC has adopted new institutions for the reorganisation of corporate entities including workouts under the insolvency mediation of article 99 and restructuring of chapter 7 (articles 107 ff).

The optional statutory appointment of expert professionals further assists the operation of such institutions, particularly when dictated by the perplexity of corporate group structures and the intricacies of cross-border proceedings. Finally, to mobilise external financing, creditors providing funds for the continuation of the business activities may share in the benefit of preferred creditor status, which has been tested and found effective in other jurisdictions as comfort to commercial lenders' risk. These are all measures that were absent in the previous legislation, at least in their current sagaciousness, and created hurdles when the effect of Greek insolvency legislation had to be transposed across frontiers.

The challenges of becoming a regional magnet forum

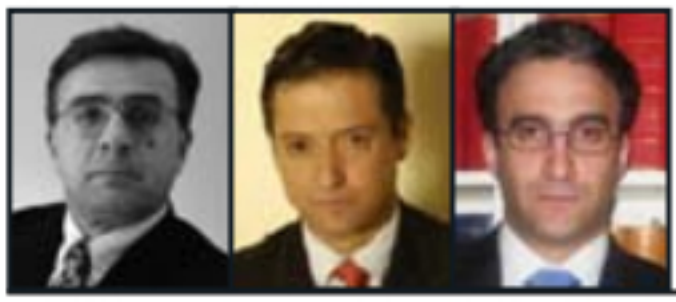
The challenges associated with the prospect of Greece becoming a regional magnet forum are detached from possible concerns of illegality on account that Greek courts have refrained from asserting jurisdiction in the absence of sufficient evidence to justify the cross-border ambit of proceeding, perhaps applying stricter criteria in doing so than those in the juridical reasoning of EIR jurisprudence on the establishment of transnational jurisdiction by other venues[3]. Greek legislation on jurisdiction allocation actually coincides with European provisions, adopting *mot a mot* the wording, and rebuttable presumption, of the notion of the centre of main interest, as the legal basis for the inception of proceedings.

Nevertheless, an increased number of petitions, especially in cases of complex cross-border proceedings, will have a significant impact on the workload of the judiciary, particularly when added to the high number of pending insolvency and debt recovery proceedings. Drawing from the experience of the past, the IC adopted measures to relieve court dockets from the plethora of small insolvencies, for which an accelerated procedure is now provided. With the same underlying reasoning, courts can now examine whether the assets of the estate suffice to cover the expenses of the procedure before deciding to retain the case. Together with the stipulated time framework for the determination of hearings and issuing of decisions, these measures purport to reduce the overall time required from filing to the conclusion of proceedings and, most importantly, to ensure that the judiciary's resources are put to better use, especially in matters requiring immediate attention, like the crucial first day orders and the determination of the core matter of jurisdiction.

Future opportunities?

As Greece enters more turbulent times, the reformed insolvency code is an opportunity to attract attention in a favourable manner. The current legislative framework is not free of criticism, but amalgamates modern provisions that corporate entities should explore to their fullest extent in achieving corporate recovery. There is no doubt that reorganisation is not a panacea, but the socio-economic impact of the generalised financial default requires that efforts should be made to this direction, and could hopefully in turn operate as a way to assuage the crisis and restore some faith in the markets. At the same time, in cases where the 'domino effect' crosses national frontiers, there is an opportunity for Greek courts to issue influential judgments in the field of cross-border insolvencies, always in conformity with the principles and spirit of the EIR, demonstrating the deeply rooted European mentality of the Greek state. □

[1] Council Regulation 1346/2000 (EIR)
[2] Law 3588/2007, SG A 153/10.7.2007
[3] Piraeus Court of Appeal 670/2009 64 DEE1/2010



George Bazinas is a partner and head of the civil & commercial law department, Constantinos Klissouras is a partner and Yiannis Sakkas is a solicitor at Anagnostopoulos-Bazinas Attorneys at Law.