

## **INSOL Europe/LexisPSL Joint Project on ‘How EU Member States recognise insolvency/restructuring proceedings commenced in third country states’—Greece**

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**Restructuring & Insolvency analysis:** This article looks at how Greece would recognise insolvency or restructuring proceedings commenced in a third country state. In particular, it considers whether the English Part 26 scheme or Part 26A restructuring plan would be recognised in Greece. Written by Greece country co-ordinator for INSOL Europe, Georgios Nikopoulos-Exintaris at n-Solution Consultants Ltd.

### **Q1. Has your country adopted the UNCITRAL Model law on insolvency? If not, does it intend to do so in the near future?**

Greece has adapted its legislation to the UNCITRAL Model Law on Cross-Border Insolvency by virtue of Law Nr 3858/2010. The appearance of the law in practice is scarce; so is the case law with respect to legal scholarship.

### **Q2. What are your country’s private international law provisions for the recognition of insolvency proceedings commenced in countries outside of the EU Member States (ie Third Party†states like the UK)?**

The recognition of international insolvency proceedings in Greece is determined by L 3858/2010. L 3858/2010 stipulates through articles 15 to 24 (Chapter C of the Law) the procedure for the recognition of international proceedings in third countries. Below are the relevant articles (amended by the author to align them with the new Bankruptcy Law L 4738/2020 as L 3858/2010 has references regarding the previous Bankruptcy Law L 3855/2007):

#### **Article 2 Definitions**

For the purposes of this law:

- ‘foreign proceedings’ means collective legal or administrative proceedings in another state, including interim bankruptcy proceedings, which requires the insolvency of the debtor and entails the partial or total deprivation of the administration of his property (bankruptcy expropriation) and the appointment of a trustee for the purpose of liquidation or reorganization
- ‘foreign main proceedings’ means the foreign proceedings conducted in the state, where the debtor has the centre of his main interests
- ‘foreign non-main proceeding’ means the foreign proceeding, which is not a main proceeding and is conducted in the state where the debtor has an establishment within the meaning of the case in this article
- ‘foreign bankruptcy trustee’ means the person or body, including the temporary appointee, who has jurisdiction under the foreign procedure to administer or liquidate the insolvency estate or to supervise the management of the debtor’s cases
- ‘foreign court’ means the judicial or other authority of another state which is competent to control or supervise a foreign main or non-main proceedings
- ‘installation’ means the place of business where the debtor carries out any non-temporary economic activity in which he uses the human factor and other assets
- ‘Bankruptcy Code’ means all the provisions of Law 4738/2020 ‘Debt settlement and provision of second chance and other provisions’ (Government Gazette A 207/27-10-2020), as it is in force from time to time
- ‘Bankruptcy Code procedure’ means the bankruptcy procedure in Greece

### **Article 15 Application for recognition of a foreign procedure**

1. The foreign bankruptcy trustee has the right to submit an application to the competent court for the recognition of the foreign procedure in which a trustee has been appointed.
2. The application for recognition shall be accompanied by:
  - a certified copy of the decision to initiate foreign proceedings and to designate the foreign bankruptcy trustee, or
  - a certificate from the foreign court certifying the existence of the foreign proceeding and the appointment of the foreign bankruptcy trustee, or
  - in the absence of such documents, any other evidence acceptable to the court as to the existence of the foreign proceeding and the appointment of the foreign bankruptcy trustee
3. The application for recognition is accompanied by a statement of the foreign bankruptcy trustee, which identifies all the foreign procedures known to him regarding the debtor.
4. The court may require a translation into Greek of the documents submitted in support of the application for recognition.

### **Article 16 Evidence of recognition**

1. If the decision or attestation referred to in paragraph 2 of the preceding Article states that the foreign proceedings are proceedings within the meaning of Article 2 (a) (foreign proceedings), and that the foreign bankruptcy trustee is a person or body within the meaning of Article 2 (d), the court is entitled to consider that they are self-presumptive.
2. The court has the right to consider that the documents submitted are genuine, regardless of whether they are certified or not.
3. Unless proven otherwise, the place of the debtor's registered office or habitual residence, in the case of a natural person, is presumed to be the centre of the debtor's main interests.

### **Article 17 Decision for recognition of a foreign procedure**

1. Without prejudice to Article 6, the foreign procedure shall be recognised if:
  - is a procedure within the meaning of Article 2 (a)
  - the foreign liquidator seeking recognition is a person or body within the meaning of Article 2 (d)
  - the information referred to in Article 15(2) is submitted with the application, and
  - the application has been submitted to the court referred to in Article 4 (competent court according to the Greek Bankruptcy Code L 4738/2020)
2. The foreign procedure is recognised:
  - as a foreign main proceeding, if it takes place in the state where the debtor has its principal interests, or
  - as a foreign non-principal proceeding, if the debtor has an establishment within the meaning of Article 2 (f) in another state
3. The decision for the recognition of a foreign procedure is issued as soon as possible.
4. The provisions of Articles 15, 16, 17 and 18 do not prevent modification or withdrawal of recognition, it is established that the conditions for recognition were fully or partially lacking or have ceased to exist.

### **Article 18 Subsequent information**

Upon filing the application for recognition or from the recognition of the foreign procedure, the foreign bankruptcy trustee must inform the court, without due delay, of:

- any material change concerning the foreign procedure or his appointment, and
- any other proceedings concerning the same debtor of which he is aware

### **Article 19 Potential temporary protection on the basis of an application for recognition of a foreign procedure**

1. From the filing of the application for recognition until the issuance of the decision, the court may, at the request of the foreign bankruptcy trustee, provide temporary protection, if there is an urgent need to protect the debtor's assets or the interests of the creditors. Temporary protection measures are in particular:

- the suspension of enforcement on the debtor's assets
- entrusting the management or disposal of all or part of the debtor's assets located in Greece, to a foreign bankruptcy trustee or to another person designated by the court, in order to protect and maintain the value of the assets, which from the by their nature or due to other circumstances, are subject to deterioration, devaluation or otherwise endangered

2. The temporary protection measures are made public in accordance with the provisions of paragraph 2 of article 84 of the (new) Bankruptcy Code (Law 4738/2020).

3. The measures of temporary protection of this article shall cease with the issuance of the decision on the application for recognition, unless they are extended, in accordance with the case in paragraph f of article 21.

4. The court may refuse the provision of temporary protection, according to this article, if it affects the foreign main procedure.

### **Article 20 Effects of the recognition of a foreign main procedure**

1. The recognition of a foreign main procedure suspends:

- the commencement or continuation of individual creditor proceedings in respect of the debtor's assets, rights, obligations or liability
- enforcement on the debtor's assets, and
- the right to transfer, charge or otherwise dispose of any assets of the debtor

2. The extent, the modification or the removal of the suspension of the cases of the previous paragraph are regulated according to articles 84, 86 and 87 of the (new) Bankruptcy Code (Law 4738/2020).

3. Article 21(1)(a) does not affect the creditor's right to request the necessary measures to secure his claim against the debtor.

4. The consequences of the recognition of the foreign main procedure according to paragraph 1 of this article do not affect the creditor's right to request the initiation of proceedings, according to articles 75, 76, 77, 78, 79 of the (new) Bankruptcy Code (L 4738/2020) nor the right to announce his claims, according to articles 152, 153 and 154 of the (new) Bankruptcy Code (Law 4738/2020).

### **Article 21 Potential legal protection based on the recognition of a foreign procedure**

1. At the same time or after the recognition of a foreign proceeding, whether principal or non-principal, the court may, at the request of the foreign bankruptcy trustee, provide any appropriate protection if the debtor's assets or creditors' interests need to be protected. Protection measures are in particular:

- the suspension of the commencement or continuation of individual proceedings concerning the assets, rights, obligations or liability of the debtor, in so far as it has not been suspended, in accordance with Article 20(1)(a)
- the suspension of enforcement on the debtor's assets, in so far as it has not been suspended, in accordance with Article 20(1)(b)
- the suspension of the right to transfer, charge or otherwise dispose of the debtor's assets, in so far as that right has not been suspended, in accordance with Article 20 (1)(c)

- the examination of witnesses, the taking of evidence or the provision of information concerning the debtor's assets, cases, rights, obligations or liability
- the assignment of the management or disposal of all or part of the debtor's assets, located in Greece, to the foreign bankruptcy trustee or to another person appointed by the court
- the extension of rendered legal protection, in accordance with Article 19(1)
- the provision to the foreign trustee of any additional power conferred by Greek Law on the bankruptcy trustee

At the same time or after the recognition of a foreign procedure, main or non-main, the court may, at the request of the foreign liquidator, assign the distribution of all or part of the debtor's assets, located in Greece, to a foreign bankruptcy trustee or to another person, appointed by the court, if the court is convinced that the interests of creditors in Greece are adequately protected.

3. When providing legal protection, according to this article, to a foreign bankruptcy trustee of a non-main procedure, the court must be convinced that the protection is related to assets which, according to the Bankruptcy Code, were to be managed by a foreign, non-main procedure, or relates to information required for the procedure.

#### **Article 22 Protection of creditors and other interested persons**

1. When granting or denying legal protection, in accordance with Articles 19 or 21, or in amending or removing protection, in accordance with paragraph 3 of this Article, the court must be satisfied that the interests of creditors and other interested parties persons, including the debtor, are adequately protected.

2. The court may make the provision of legal protection, provided for in Articles 19 or 21 of this law, subject to conditions that it deems appropriate.

3. The court may, on its own initiative or at the request of the foreign judge or person whose legitimate interests are affected by the protection afforded, in accordance with Articles 19 or 21, amend or revoke that protection.

#### **Article 23 Actions to cancel actions harmful to creditors**

1. Upon recognition of a foreign proceeding, the foreign bankruptcy trustee is entitled before the Greek courts to request the revocation, cancellation or recognition of the inactivity of acts harmful to the creditors.

2. In the case of a foreign non-main proceeding, the court must be convinced that the actions of the foreign liquidator are related to assets which, according to the Bankruptcy Code, are subject to the management of a foreign non-main proceeding.

#### **Article 24 Intervention of a foreign bankruptcy trustee in bankruptcy proceedings in Greece**

Upon recognition of a foreign proceeding, the foreign bankruptcy trustee is entitled to intervene in any proceeding in which the debtor is a party, provided that the conditions of the Bankruptcy Code are met.

### **Q3. Would your country recognise an English scheme of arrangement (under Part 26 of the Companies Act 2006 (CA 2006)) or an English restructuring plan (under CA 2006, Pt 26A) now post-Brexit and on what basis? (eg Lugano Convention, Hague Convention, Rome I or other private international law rules)**

To my understanding Greece would recognise an English Scheme of Arrangement or an English restructuring plan, following the most recent available legal framework currently in force. Today this is the combined application of L 3858/2010 (based on the UNCITRAL model) and the new Greek bankruptcy code (L 4738/2020)

### **INSOL Europe/LexisNexis table of 'How EU Member States recognise insolvency/restructuring proceedings commenced in third country states'**

A table produced by INSOL Europe in partnership with Lexis Nexis (also incorporating information from Lexology Getting The Deal Through) is available here: [INSOL Europe/Lexis/EPNL Joint Project on 'How EU Member States recognise insolvency and restructuring proceedings of a third country': consolidated table.](#)

We look at how EU Member States would recognise insolvency or restructuring proceedings commenced in a third country, such as the UK (post-Brexit), the US, Japan, Australia or Canada. As always, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.

