The new Greek Insolvency Code: 'Something old, something new, something borrowed, something blue'

YIANNIS G. SAKKAS
Scientific Advisor, Bazinas Law Firm, Athens, Greece

YIANNIS G. BAZINAS
Attorney-at-law, Bazinas Law Firm, Athens, Greece

The Greek insolvency code[1] (IC) has once again been amended, keeping to the tradition of the past decade that requires domestic insolvency legislation to be revisited at frequent intervals.

Despite that the amendment is very extensive, the new law has retained a number of the stipulations found in the previous (old) IC[2]. New provisions and proceedings have been included to ensure that the IC is at par with other modern insolvency laws in Europe and elsewhere. In fact, the new IC borrowed terms and wording from Directive (EU) 2019/1023 and embraces its recommendations. Hopefully, the new code will not leave insolvency actors feeling blue, especially considering that its long-term goal is to strengthen financial stability, with the new law envisaged as a vital tool in tackling existing NPLs and preventing the build-up of more[3].

The new IC was initially scheduled to come into force on 1 January 2021 but was then pushed back to March 2021 (for rehabilitation, liquidation proceedings etc.) and June 2021 (for early warning, OCWs and small insolvencies). Various provisions of the old legislation, some of which could be traced back to the Napoleonic Code de Commerce of the year 1807, were maintained in the new code. This was not the case for intra-insolvency reorganisation proceedings that were available under the (old) IC and have now been abolished altogether. Reorganisation under the previous provisions was one of the possible outcomes of the unitary insolvency procedure, commencing with (or after) the declaration of the debtor's insolvency. However, the new law shifts (even more) the weight to pre-insolvency proceedings for the rescue of debtors.

A sharp departure from erstwhile legislation is that now, for the first time in Greece, insolvency proceedings are also available to non-merchant debtors. The new legal framework also marks a transition to the digital era for domestic insolvency proceedings with the use of electronic means of communication for the filing of claims, submission of restructuring or repayment plans, voting and notifications to creditors, lodging of challenges and appeals etc., following the example of Article 28 of Directive (EU) 2019/1023.

In fact, the new IC follows the lead of the EU Directive on preventive restructurings, as reflected in the provisions adopted on early warning tools with alert mechanisms now added to the IC, the out-of-court debt restructuring scheme for pecuniary obligations to financial institutions, the State and Social Security Institutions, pre-insolvency rehabilitation proceedings (also existing under the previous law), debt discharge for debtors which are natural entities in three (3) years after the declaration of insolvency etc. However, domestic scholars have taken the view that the harmonisation of the IC with Directive 2019/1023 was not particularly necessary, with criticism also suggesting that borrowing terms and expressions found in the Directive required more attention to detail when transposed to national law, that the IC approach to regulate some matters by reference to ministerial decisions (to be issued at a subsequent time) is not doing any favours for the certainty of the law and that the use of definitions as a legislative technique, is an unsuitable and unfamiliar practice in the domestic legal order[4].

Despite the high aspirations (and expectations) of the amended IC, early signs indicate that the new law will not have managed to build strong immunity to the (frequent) amendment syndrome it has developed. ■

> *Hopefully, the new code will not leave insolvency actors feeling blue, especially considering that its long-term goal is to strengthen financial stability*

Footnotes:

1 Law 4738/2020 State Gazette (SG) A' 207/27.10.2020.

2 Law 3588/2007, SG A' 153/10.7.2007

3 G. B. Bazinas, Y. G. Sakkas, Y. G. Bazinas, Greece, Special Alert to Chapter 23A, Collier International Business, Insolvency Guide, Matthew Bender/Lexis-Nexis 2020.

4 Psychomanis S., Insolvency Law, Sakkoulas, 2021, p., 5.