The new Greek Insolvency Law: A turning point

Yiannis Bazinas and Yiannis Sakkas write on the recent transposition of the EU Directive on Restructuring and Insolvency in Greece applicable since March 2021

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

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

> ***The GIL now includes provisions on pre-insolvency rehabilitation and liquidation [plus] provisions relating to electronic early warning tools***

Over the past decade, one of the standard features of the Greek legal scene has been the constant amendment of the country's Insolvency Code (IC).

Introduced in 2007, the genesis of Greece's first comprehensive insolvency legislation came at an inopportune time, as the country soon spiralled into a lengthy economic crisis that resulted in numerous business failures. As the situation deteriorated, the problem of rising debt grew to systemic proportions, as NPLs on Greek banks' balance sheets reached unsustainable levels.

In this environment, the IC fell prey to various reform initiatives, whose purpose was to enable banks to resolve the pressing problem of private debt as quickly and efficiently as possible. At the same time, the effectiveness of the IC was undermined by the introduction of various quasi-restructuring procedures, which conflicted with (rather than complemented) the traditional insolvency processes. When the dust finally settled, the situation appeared radically different than when the IC was introduced; its original coherence and structure was somewhat compromised, whereas a patchwork of parallel procedures undermined its status.

In the face of this unstable setting, the introduction of the EU Directive on Restructuring and Insolvency (Directive) provided an opportunity to deliver a coup de grâce to the much-maligned IC. As a result, the IC was amended one last time, only this time by overhauling it and replacing it with a completely new piece of legislation, the new Greek Insolvency Law (**GIL**),[1] under the aspirational title of "*Debt Settlement and Facilitation of a Second Chance*".

One of the main driving forces behind the introduction of the GIL was to consolidate in a single piece of legislation all insolvency and restructuring related proceedings and provisions that had been introduced over the years by special legislation (surprisingly, the GIL renounces the title "Code"). This was considered necessary in order to reduce the excessive fragmentation and the multiplicity of laws that characterized the field creditor-debtor relations.

The GIL thus now includes, not only provisions on pre-insolvency rehabilitation and liquidation, but also provisions relating to electronic early warning tools, which provide for three levels of insolvency risk (low, medium, high), the out-of-court workout (OCW) mechanism as well as provisions regulating the profession of insolvency practitioners. While the benefits of consolidation should not be understated, it must be pointed out that, as a result, the GIL has become significantly more convoluted than the previous IC.

In addition to structural consolidation, nonetheless, the new GIL includes a number of important substantive reforms to the Greek insolvency regime. One of the most striking changes is the extension of eligibility for insolvency liquidation to natural persons. This marks a sharp break from the previous framework, which, tracing its roots to the Napoleonic *Code de Commerce*, relied on a strict conceptual distinction between merchants and non-merchants as regards their eligibility for insolvency. Previously, Greek insolvency law had dismissed the idea of granting insolvency capacity to non-merchant debtors and financial default of natural entities was dealt within consumer bankruptcy proceedings,[2] introduced in the Greek legal order in 2010 during the economic crisis that dictated the need for the adoption of a new institution.[3]

Another important reform is the abolition of insolvency reorganization proceedings. Under the IC, reorganization was one of the possible outcomes of the unitary insolvency procedure, commencing with (or after) the declaration of the debtor's insolvency. Reorganisation proceedings barely survived the IC amendments in 2016-2017, which did not abolish only the reorganization provided in Chapter 7 of the IC, despite its very limited appeal.

Since formal reorganization is not an option anymore, the main weight of corporate restructurings will have to be borne by the pre-insolvency rehabilitation procedure. Rehabilitation, which is structured as a pre-packaged procedure, had traditionally been the instrument of choice for debtors wishing to restructure their financial obligations. Taking into account existing practice, the GIL elevates rehabilitation as the sole fully-fledged restructuring mechanism.[4]

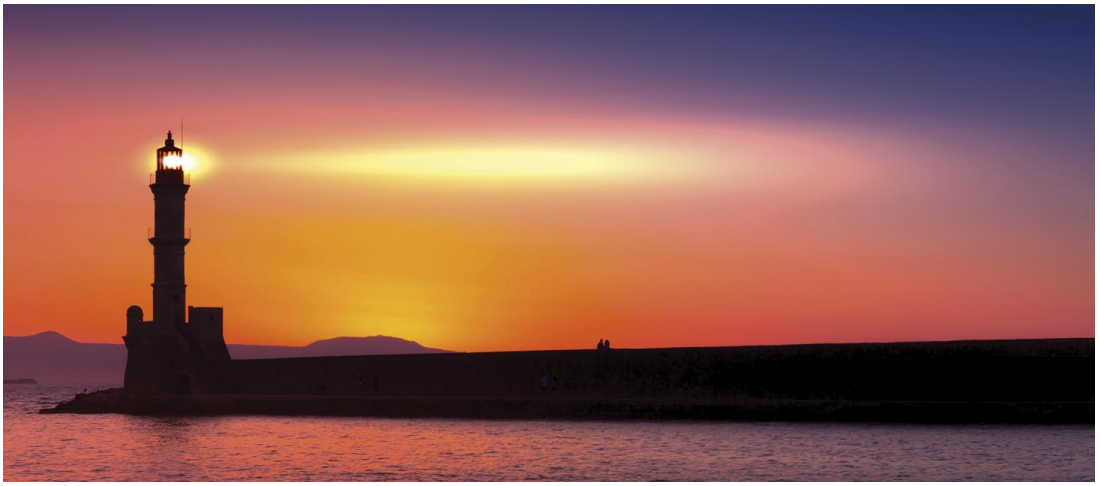
This latter aspect ties into another important factor underpinning the introduction of

the GIL, namely the transposition of the Directive. Although a number of commentators had argued that the harmonisation of the Greek insolvency framework with the Directive was not particularly necessary, since most of its provisions were already effectively transposed in Greek law, the GIL took the opportunity to formally incorporate a number of the Directive's elements.

For instance, the GIL introduces early warning mechanisms (Articles 1-5) as provided under Article 2 of the Directive. Early warning tools are adopted for the first time in the domestic legal order and reflect the objectives of the Directive. Specifically, the above mechanism purports to provide debtors with clear and transparent early warning tools, which could identify circumstances that could lead to insolvency and highlight the need for immediate action.[5] Available tools include both a warning mechanism as well as consulting services provided by the Borrowers' Services Centres, professional bodies[6] etc. Debtors can access information on available early warning tools as well as procedures and measures for debt restructuring and discharge electronically through the website of the Special Secretary for Private Debt Management.[7]

In addition, many of the Directive's provisions on preventive restructuring plans are now reflected in the pre-insolvency rehabilitation procedure. In particular, the GIL introduces a cross-class cramdown option that allows for the confirmation of a rehabilitation plan, even if a class of creditors has voted against it, provided that the plan conforms to the relative priority rule, under which the dissenting class is treated at least as favourably as any other class of the same rank and more favourably than any junior class (Article 54 para 2).

In addition to bolstering restructuring tools in the Greek framework, the GIL also marks the 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., as also provided in the Directive. As a result, although the introduction of the GIL was not really motivated by the need to transpose the Directive, it has presented an opportunity to further align the Greek insolvency framework with the European paradigm.

Some time will pass until a clear view of the application of the GIL by the courts can emerge. The new IC was initially scheduled to come into force on 1 January 2021, but the date was then postponed till March 2021 (for rehabilitation, liquidation proceedings etc.) and June 2021 (for early warning, OCWs and small insolvencies). As a result, the new regime has begun to apply to insolvency cases only recently and courts are only beginning to come to terms with the new provisions.

Still, a preliminary observation can be expressed in that the GIL marks a turning point for Greek insolvency law. The GIL has not really been the catalyst of change, but rather represents the formal recognition of a fundamental conceptual shift that has been occurring for the better part of the last decade and has witnessed the Greek legal framework move away from its pre-existing principles and defining characteristics since the 19th century. Under the new GIL, Greek insolvency law, heavily influenced by European and international paradigms, takes a fundamentally different orientation and adopts many novel concepts and provisions. The real question is whether this developed, yet complicated new regime, will be able to meet the expectations of debtors and creditors. Though past experience may not provide much ground for optimism, the implementation of the new GIL represents one of the most important challenges that the Greek legal framework is currently facing. ■

> ***Early warning tools are adopted for the first time in the domestic legal order and reflect the objectives of the Directive***

Footnotes:

1 Law 4738/2020 State Gazette A 207/27.10.2020.

2 Law 3869/2010, State Gazette A 130/03.08.2010.

3 Following the adoption of the GIL, there is no longer an option to file new applications for consumer bankruptcy proceedings under Law 3869/2010. Proceedings pending at the time of the GIL's entry into force continue according to its provisions.

4 The OCW mechanism is more limited in its scope and effect.

5 Article 1(1) GIL. "*In domestic law there was no similar mechanism, with the exception of some rules for businesses requiring for example to prepare balance sheets or corporate governance rules or actions by the general assembly in cases where the company's capital is reduced etc.*,": E. Perakis, Insolvency Law (Nomiki Bibliothiki, 2021), 18.

6 Such as, for example, Chambers of Business or other professional associations; see Article 1(2), GIL.

7 See Article 1(3), GIL; www.keyd.gov.gr/

8 The GIL applies to proceedings commencing after its entry into force: Article 263(1), GIL. However, Article 263(2), GIL states that a pending insolvency procedure, following a decision of the creditors' meeting, may be altered to an insolvency procedure under the GIL at the same stage the pending procedure has reached.