



INSOL Europe
Insolvency Officeholders Forum
Survey, Greece

January 2016

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1. INTRODUCTION

Greek law does not contain provisions to establish and regulate the institution of Insolvency Office Holders. The administration and liquidation of insolvency estates is entrusted to the “*syndic*”, an attorney at law appointed on the conditions set out in the Greek Insolvency Code (IC)¹. Other duties within the context of insolvency and pre-insolvency proceedings may also be assigned to other professionals and/or legal entities (the mediator, the expert, the special mandatee, liquidator etc).

However, the IC was amended in August 2015² to provide, among other, that as of 1.1.2016, the responsibilities of the syndic, the mediator, the special mandatee and the special liquidator provided in the Insolvency Code will be exercised by a natural or legal person, who, upon registration in a professional registry, will have the right to exercise the profession of the insolvency administrator.

Nevertheless, the conditions for the exercise of the profession of an insolvency administrator, the professional qualifications required, the way the profession is organised, the appointment and dismissal of the administrator, supervision, responsibilities in relation to the insolvency proceedings as well as the applicable sanctions were not included in the IC with the summer 2015 amendment and were left to be determined by a subsequent presidential decree. Such presidential decree has not been issued so far. However, the IC is scheduled for another amendment within the course of 2016, which could include the provisions on insolvency practitioners.

2. TYPES OF INSOLVENCY OFFICE HOLDER

Identify the types of Insolvency Office Holder (IOH) undertaking winding up proceedings, trustee/creditor in possession restructuring proceedings, with a short description of each role.

As already mentioned, Greek law has assigned the administration and liquidation of insolvency estates to **syndics**³. Upon the declaration of the insolvency, the debtor is *ipso jure* deprived of the administration (managing and disposing) of his estate⁴, which is exercised only by the syndic. Apart from his general duties, the syndic also prepares an inventory of the estate⁵, drafts a report for the creditors’ committee on the financial position of the debtor, the causes of insolvency and the possibilities of a corporate rescue⁶, and is further entitled to file a reorganisation plan and supervise the debtor’s reorganisation.

¹ Law 3588/2007, State Gazette (SG) A 153/10.7.2007, a full English translation of the Greek Insolvency Code is available at www.bazinas.com.

² Law 4336/2015, SG A 94/14.8.2015.

³ Article 7 (1) IC, on the appointment of the syndic with the court decision declaring the insolvency.

⁴ See article 17 IC on the insolvency divestment.

⁵ Article 68 IC.

⁶ Article 70 IC.

It should be noted that the IC only lists the syndic as an insolvency actor in insolvency and pre-insolvency proceedings together with the insolvency court, the Judge rapporteur, the creditors meeting and the committee of creditors⁷.

However, the Insolvency Code also provides for the appointment, where necessary, of other professionals in insolvency and pre-insolvency proceedings with expert knowledge of technical, financial, accounting or other nature. These include **mediators**⁸, used to facilitate the conclusion of a workout agreement between the debtor and his creditors, the **expert**⁹, who prepares a report on the financial position of the debtor, the viability of the business and the possibility of rescue proceedings, as well as **special mandatees**¹⁰ to perform specific tasks assigned by the court, particularly the safeguarding of the debtor's assets, the performance of special management acts or the supervision of the execution of rehabilitation agreements. The IC also provides for the appointment of a **liquidator** in special liquidation proceedings¹¹, who, upon the decision for the opening of special liquidation proceedings, is vested with the debtor's administration and management. The liquidator also prepares a report on the operations of the debtor company and the course of the liquidation.

For the sake of completeness, it should be noted that a **liquidator** is also appointed in consumer bankruptcy proceedings, which however are not classified as insolvency proceedings under Greek law and therefore do not form part of the Insolvency Code¹². The liquidator is, among other, entrusted with the administration of the debtor's estate, the distribution of any liquidation proceeds to creditors etc. A **special administrator** is also appointed in the proceedings of law 4307/2014 which were recently adopted as *extra* insolvency emergency measures for the rehabilitation of viable debtors. Law 4307/2014 proceedings, like in the case of consumer bankruptcy proceedings above, are not considered insolvency proceedings and consequently do not form part of the Insolvency Code. The special administrator aids in the sale of the business as a whole or in parts.

3. SIZE OF THE PROFESSION

Identify the approximate size of the IOH profession noting those entitled to take appointments and those actively taking appointments. Identify any restrictions on the size of the profession.

We do not have available information on the size of the profession. The Bars at the district of each court around the country prepare a list for each calendar year with the attorneys wishing to act as syndics. The courts then appoint syndics from the corresponding list in their district. For instance, the Athens Bar currently has a list of approximately 300 syndics, Piraeus Bar 40 syndics, Thessaloniki Bar approximately 200. Similar lists exist in all district Bars in Greece. Where there is no list for the

⁷ Article 52 IC.

⁸ Article 102 (1) IC.

⁹ Article 100 (3) IC.

¹⁰ Article 102 (6) IC.

¹¹ Article 106k (2) IC.

¹² Article 9 (1) Law 3869/2010.

current year, the one of the previous year is used. Finally, when there is not a list altogether, the court freely appoints a syndic.

There is also no information available on the active appointments of syndics and the law does not provide for a maximum number of syndics in each Bar list.

4. PRACTISING NORMS

Provide a brief overview of the style in which members typically carry on business, whether as sole practitioners, in specialist firms or as part of diverse professional service firms.

The Insolvency Code provides that only lawyers can act as syndics¹³. Therefore, by definition, syndics are solo practitioners, who however often work in specialist law firms.

5. QUALIFICATION TRAINING AND ENTRY INTO THE PROFESSION

Describe the qualifications required to undertake the IOH role, the extent to which professional examinations are required, the typical “apprentice or training period” required of a professional before undertaking appointments.

Describe the subject matter of any examinations, together with the responsible examining body. Specify the typical % sitting the examinations and passing.

The sole qualification requirement imposed by the IC is that only attorneys at law with at least five (5) years of practising experience can act as syndics. There is no specialised exam, apprentice or training required. However, as already noted in the introductory section the forthcoming amendment to the IC may include specialised professional qualifications requirements¹⁴.

6. PROFESSIONAL BODIES

Identify whether IOHs are typically members of a specialist profession, or a subset of another (e.g., lawyers or accountants).

List the professional bodies of which IOHs may typically be members, indicating those which undertake regulatory activity within a statutory framework and those that undertake activity outside a statutory framework (e.g., best practice and/or compulsory minimum standards for member entry criteria).

Regulatory activity may typically comprise: setting and enforcing minimum professional standards, specifying ethical standards, requiring members to undertake minimum annual continued professional education, reviewing on a periodic basis IOHs

¹³ Article 63 (1) IC.

¹⁴ Mediators could either be syndics from the Bar list or mediators of law 3898/2010 (on the mediation in civil and commercial cases) and require the corresponding qualifications. The expert of article 100, may also be appointed as a mediator. The expert, who can also be appointed as a mediator, is a credit institution, a certified auditor or an auditing firm or an accountant depending on the type of the debtor.

compliance with minimum standards (case conduct reviews), adjudicating complaints regarding member's conduct, levying fines and impositions on members and excluding members from membership and other.

Identify the regulatory activity undertaken by professional bodies.

Identify the approximate dates of foundation of the professional bodies, or emerging bodies.

There is a statutory requirement for syndics to be practising attorneys, and therefore must be registered with the Bar.

Apart from that, at present, there are no specialised professional bodies for Insolvency Office Holders with regulatory activities within a statutory framework or with best practice and/or compulsory minimum standards for member entry criteria etc. (see also introductory section).

It is note that the provisions of the Code of Lawyers apply on syndics in the exercise of their duties as lawyers, their conduct etc.

7. CONTINUING PROFESSIONAL EDUCATION (“CPE”)

Specify any minimum requirement for continuing professional education (number of hours per year) and the types of activity eligible for continuing professional education. Indicate whether the CPE requirement is set within a statutory framework (by professional bodies undertaking statutory regulation) or outside a statutory framework (e.g., by professional bodies who require best practice but not within a statutory framework).

There are no minimum requirements for continuing professional education at present.

8. BODY CORPORATE OR INDIVIDUAL

Identify whether an IOH may be a body corporate, or must be an individual.

See answer under para. 4 above and footnote 14 (practising norms).

9. SANCTION FOR ACTING AS AN IOH WITHOUT PROPER AUTHORISATION

Specify the consequences of acting as an IOH without proper authorisation.

Because syndics are court appointed and selected from lists drafted by the local Bar, it will be unusual for a person to achieve appointment without proper authorization. In any case, sanctions in accordance with the lawyers code as a well as provisions on fraud, tort etc may be relevant depending on the circumstances.

10. BONDING AND INSURANCE

Identify the surety requirements, if any, that an IOH must maintain in respect of appointments.

Identify the requirements of IOHs to maintain professional indemnity insurance.

Identify the market that is used to provide professional indemnity insurance, and whether IOHs self-syndicate any element of insurance.

There are no such requirements at present.

11. APPOINTMENT OF IOHS

For each class of IOH identify the general methods of selection and criteria for appointment to the role.

Syndics are selected by the Court from a list drawn by the relevant Bar for each calendar year, based on the requests of interested lawyers. Where there is no list for the current year, the one of the previous year is used. Finally, when there is no list altogether, the court freely appoints a syndic¹⁵.

12. REMUNERATION

For each class of IOH identify the methodologies of remunerating the IOH (hours and rates, % of assets, % of distribution, etc.). Identify who determines the methodology. Identify any party or parties with a right to review and challenge remuneration. Identify any requirements or guidelines for the provision of information regarding remuneration and analysis to supervising committees, creditors or courts.

Identify any market norms relating to IOHs' remuneration.

The syndic's remuneration is determined freely by the insolvency court on the basis of the value of the insolvency estate, the time the syndic was occupied and the beneficial outcome of his activities to the interests of the insolvency. Additional factors taken into account in determining the syndic's remuneration include the overall effort of the syndic and the level of complexity of each case as well as the efficiency and speed of the syndic in performing its duties¹⁶.

In determining the syndic's remuneration, the court also takes into account a report that the supervising Judge prepares for this purpose. The creditors committee can file a report to the insolvency court on the fulfilment of the above criteria.

¹⁵ Mediators are appointed by the Court after taking into account nominations made by the debtor or the creditors, see Article 102 (2) IC. The expert is selected by the debtor, see Article 100 (3) IC. For special mandatees the Court selects a person from the list of syndics or assigns the tasks of the special mandatee to the Mediator, see Article 102 (6) IC. The petitioner for the inception of special liquidation proceedings proposes a liquidator to the court. If the insolvency court accepts the application it appoints the proposed liquidator, unless there is more than one application or main interventions and different liquidators are proposed, in which case, the court appoints the liquidator best suited in its discretion, see Article 106k (5) IC. The same also applies for the special administrator of law 4307/2014. Finally, the special liquidator in consumer bankruptcies is appointed by the court and is either nominated by the majority of creditors or selected by a list of experts prepared in accordance with the provisions of the code on civil procedure, see Article 9 (1) law 3869/2010.

¹⁶ See Athens Court of Appeals (CA) 1511/1995 Commercial Law Review 1995, 855.

Remuneration for any additional legal services performed by the syndic in the insolvency is not determined by the court. Instead, this is calculated in accordance with the Code of Lawyers¹⁷.

Finally, all parties affected, including the debtor and the creditors, can challenge the syndic's remuneration¹⁸.

13. PERSONAL LIABILITY OF IOHs

Identify any areas where an IOH may be typically exposed to personal liability in carrying out his / her functions.

The syndic is personally liable for fault against the group of creditors and the debtor for any damage caused to the insolvency estate. The syndic is also responsible for any acts of a third party, provided that the syndic assigned such duties without the right to do so. If the syndic was entitled to make such assignment he is only liable for a misdemeanour for the selection of such third party and for the instructions he provided¹⁹.

The syndic is also liable against third parties damaged by his activities but only for malice or gross negligence. At the same time, the syndic could also be liable for a group debt that has been created by his actions. For this to happen, the estate should not be in a position to satisfy the debt and the syndic must have failed to foresee this or he has made such assessment and neglected to act. In this case, the syndic is obliged to compensate the group creditors²⁰.

In addition, the syndic's liability under the provisions on tort is not excluded²¹.

Finally, to the extent that the syndic is making business decisions, theory suggest that the proper measure for such liability is the "business judgement rule"²². Therefore, the syndic will not be liable for reasonable business decisions taken in good faith on the basis of sufficient information and exclusively in the interest of creditors²³.

¹⁷ See Athens CA 740/1998 Greek Justice 1999, 1189.

¹⁸ In cases the mediator is designated by the debtor, his remuneration is also agreed with the latter, while in any other case, the mediator's remuneration is determined by the insolvency court. The expert's remuneration is also agreed with the debtor. The remuneration of the special mandatee is determined by the insolvency court. The remuneration of the liquidator in special liquidation proceedings is also determined by the court. As regards the liquidator in consumer bankruptcies the law provides that the rules for syndics apply. Finally, the remuneration of the special administration is agreed between the special administrator and the applicants for the inception of the proceedings of law 4307/2014.

¹⁹ Article 80 (1) IC.

²⁰ Article 80 (2) IC.

²¹ Article 80 (3) IC.

²² Article 22a on the liability of the members of the Board of Directors, Law 2190/1920 on companies limited by shares.

²³ The expert, the mediator and the special mandatee are liable towards the debtor and the creditors for any direct losses. The expert is liable for malice and gross negligence, while the mediator and the special mandatee for any misdemeanours. The liquidator of special liquidation proceedings and the special administrator of law 4307/2014 are liable for malice and gross negligence. The provisions for the liability of syndics also apply to the liquidator in consumer bankruptcies.

14. RELEASE OF IOHs FROM LIABILITY

Identify the mechanism or convention by which an IOH is released from liability in respect of an assignment undertaken, and any exceptions to the release granted.

Where there is no mechanism for a statutory release from liability describe the market norms that in practical terms absolve an IOH from past acts.

There is a three (3) years statute of limitation on all claims, as of the time the person suffering the damage became aware of the damage and of the damaging act²⁴. In any case, claims against the syndic are time barred after three years from the expiry of his office²⁵.

15. INDEPENDENCE

Set out the applicable standards relating to IOHs independence from the debtor, and / or creditors or other parties.

The Greek Insolvency Code provides that a syndic cannot be appointed in an insolvency if connected with the debtor (or in the case of legal persons with the natural persons that constitute the management such debtor) with a) a blood or by marriage relationship in a straight line indefinitely or b) by adoption and c) indirectly until the fourth grade or d) is or was married or a fiancé to such persons above²⁶ and in general in cases of conflict of interest.

²⁴ Article 80 (5) IC.

²⁵ Article 80 (5) IC.

²⁶ Article 63 (2) IC.



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