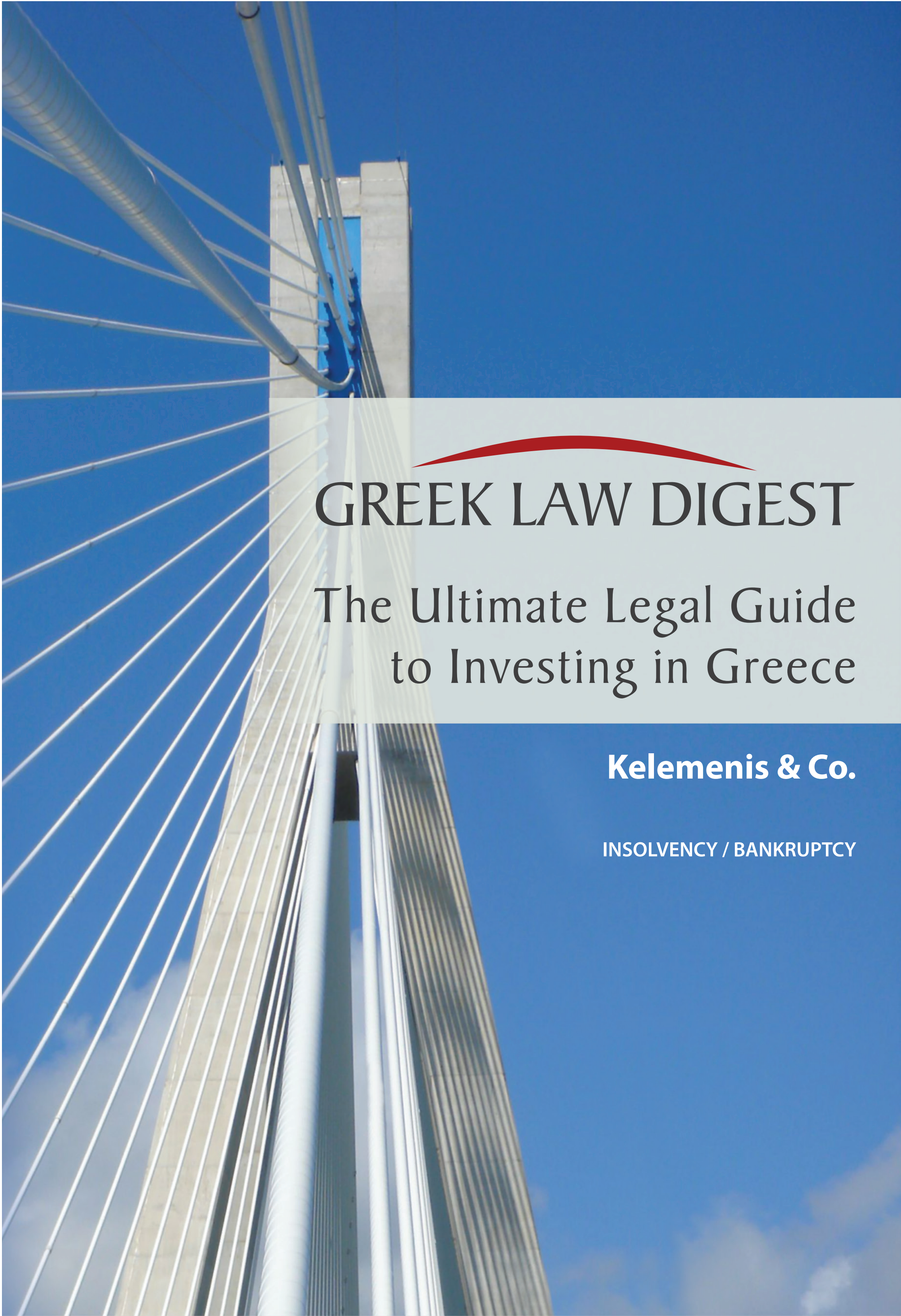

GREEK LAW DIGEST

The Ultimate Legal Guide to Investing in Greece

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Kelemenis & Co.

INSOLVENCY / BANKRUPTCY

NOMIKI BIBLIOTHIKI

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INSOLVENCY / BANKRUPTCY

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Give a brief overview of the reorganization and insolvency regulation in Greece?

Rescue and insolvency procedures are governed by the Bankruptcy Code (statute 3588/2007). However, the compulsory winding-up proceedings of credit institutions and insurance undertakings are subject to sector-specific legislation. The Bankruptcy Code, as now in force, envisages that a distressed or bankrupt debtor may be subject to the following procedures:

- Rehabilitation process of articles 99 et seq.;
- Post-bankruptcy reorganization process of articles 107 et seq; and
- Post-bankruptcy liquidation process.

Post-bankruptcy proceedings aim to repay creditors and also, if possible, rescue and restructure an insolvent company's business. On the contrary, pre-bankruptcy procedures aim at the reorganization of the debtor's business and its continuation following an agreement with the majority of its creditors. The Bankruptcy Court, which supervises these proceedings, is a three-member court of first instance in the geographical region where the debtor has its key establishment.

What are the conditions for the initiation of insolvency procedures?

Insolvency proceedings apply to merchants, i.e. (a) individuals (but not those who exercise professional activities, such as doctors or lawyers, who cannot be subject to bankruptcy proceedings); (b) companies limited by shares; (c) limited liability companies; (d) general partnerships; and (e) although not typically merchants, associations which pursue economic activities. These merchants need to be domiciled in Greece. This means that a company must have a seat in Greece for the Greek courts to establish jurisdiction over insolvency proceedings. The conditions precedent for the commencement of insolvency proceedings are:

- The debtor is in a state of cessation of payments, i.e. the debtor is permanently unable to pay its overdue debts (or at least the greatest part thereof); and
- The debtor is in a present or foreseeable financial difficulty, i.e. the debtor has cash-flow problems or is about to become permanently unable to pay its future debts as they fall due, but has not reached cessation of payments yet.

Who can initiate insolvency procedures?

If the debtor is in a state of cessation of payments, its bankruptcy can be declared following a petition filed by:

- the debtor itself;
- any of its creditors; and
- in certain circumstances, the public prosecutor on grounds of public interest.

The court may reject the petition on the following grounds:

- The debtor's assets will not cover the cost of the bankruptcy proceedings; or
- The petition indicates that the applicant has exercised its rights abusively (e.g. the debtor filed the petition to avoid paying its debts).

If the debtor is in financial distress but has not reached the state of cessation of payments, it may opt to:

- file a petition for its declaration as bankrupt; or
- file a petition for the initiation of the rehabilitation process of articles of 99 et seq. (i.e. pre-bankruptcy proceedings); or
- file petitions for both its declaration as bankrupt and for the initiation of the rehabilitation process of articles 99 et seq.

Although the rehabilitation process of articles 99 et seq. is a pre-bankruptcy procedure, the debtor who in a state of cessation of payments and therefore eligible to be declared bankrupt, may also opt to file a petition to enter the rehabilitation process. Indeed, if two competing petitions have been filed in respect of the same debtor, one for bankruptcy and one for the rehabilitation process, the court will stay its proceedings for the petition of bankruptcy until the process of articles 99 et. seq is (un)successfully terminated.

How is the rehabilitation process initiated?

The debtor must file a petition for the initiation of the rehabilitation process before the Bankruptcy Court. If the debtor is a state of cessation of payments, it must also apply for its declaration as bankrupt, albeit its failure to do so does not entail the rejection of its petition for the rehabilitation process.

The Bankruptcy Court must schedule the hearing for the petition within two months and shall initiate the rehabilitation process if it deems that there are credible prospects of the business to be rescued and that the collective interests of the creditors are not adversely affected by the process. Said procedure has an initial duration of four months (as from the date the court decision to open the procedure is issued). However, the chairperson of the Bankruptcy Court may prolong it for another month following a petition of the debtor or for three months following a joint petition of the debtor and the majority of its creditors. The agreement on the debtor's rehabilitation must be reached within the above timeframe; otherwise, the process is declared as unsuccessfully terminated.

Who are the bodies involved in the rehabilitation process?

The bodies involved in the rehabilitation process are:

- The Bankruptcy Court, i.e. the three-member court of first instance in the region where the debtor has its key establishment;
- The expert (financial consultant) who is chosen by the debtor and can be either a credit institution or auditor/auditing firm;
- The mediator appointed by the court to facilitate negotiations between the debtor and its creditors, following a petition filed either by the debtor or its creditor(s) or the financial consultant;
- The administrator (if a person other than the mediator) appointed by the court to undertake specific actions, specifically in relation to the preservation of the debtor's property and/or the supervision of the execution of the rescue plan agreement.
- The creditors or the creditors' assembly.

What are the prerequisites for a rehabilitation rescue plan to be officially concluded?

The rehabilitation process is concluded with an agreement reached between the debtor and its creditors following the convocation of the creditors' assembly. Said assembly is in quorum if attended by creditors representing at least 50% of the debtor's debts. In order for the assembly to pass a resolution on the acceptance of the rescue agreement a dual threshold is set, i.e. the agreement must be approved:

- by creditors representing 60% of the debts of the participants in the assembly; and
- by creditors representing 40% of the secured debts of the participants in the assembly.

The creditor's assembly further appoints its representative, who will countersign the agreement with the debtor. However, if the debtor reaches an agreement with creditors representing at least 60% of the debts and 40% of the secured debts, then the agreement is concluded without the convocation of the creditors' assembly.

Following its conclusion, the agreement is ratified by the Bankruptcy Court and is thereafter binding upon all creditors (including non-consenting creditors).

Are there any mechanisms used by debtors to protect their business assets in view of pre-bankruptcy procedures?

A debtor wishing to apply for the initiation of the rehabilitation process of articles 99 et seq. of the Bankruptcy Code may request that the court grants provisional measures which will apply until the ratification of the agreement. The court may thus suspend individual enforcement measures against the debtor's assets. Said suspension may also be extended to protect the debtor's guarantors or joint debtors as well. Provisional measures do not, however, cover:

- financial collateral agreements and close-out netting clauses (statute 3301/2004 transposing EU Directive 2002/47).
- the termination of lease agreements or the repossession of leased assets, if monthly rents have not been paid for at least a period of six months.

Are there any pre-bankruptcy collective liquidation procedures? If applicable, give a brief description of such procedures.

Statute 4013/2011 has further introduced an accelerated pre-bankruptcy collective liquidation process. Said process is initiated following a petition filed by;

- the debtor itself;
- any of its creditors; and
- in certain circumstances, the public prosecutor on grounds of public interest.

The court will stay its proceedings for the petition of collective liquidation until the process of articles 99 et seq of the Bankruptcy Code is (un)successfully terminated. If the court accepts the petition, it will appoint the liquidator who will undertake the realization of the debtor's assets and the satisfaction of its creditors from their proceeds.

What are the effects of bankruptcy proceedings?

The declaration of the debtor as bankrupt has the following results:

- all the debtor's assets form part of the bankrupt estate;
- the debtor can no longer manage its business, unless the court grants it a specific right to do so. The court is highly unlikely to grant this right and will only do so

if the debtor has filed a bankruptcy petition at its own initiative (article 18 of the Bankruptcy Code);

- the court appoints an administrator (syndic) to continue running or liquidate the business;
- all unsecured debts become due and cease accruing interest;
- creditors cannot take individual enforcement measures;
- contracts which are of a personal nature and strictly related to the debtor are terminated; and
- legal entities declared bankrupt are liquidated.

Bankruptcy proceedings end:

- following the liquidation of the bankrupt estate and payment of creditors;
- with a restructuring plan (see below); or
- upon the lapse of time limits set by law [i.e. ten years from when the creditors' assembly first meets (article 166(3) of the Bankruptcy Code) and 15 years from the declaration of bankruptcy].

The Bankruptcy Code has further introduced an accelerating bankruptcy procedure if the following criteria are cumulatively met:

- the debtor's assets are valued at less than €100,000; and
- they contain no immovable properties

Are there any post-bankruptcy reorganization procedures? If applicable, give a brief description of such procedure.

A restructuring plan is a bankruptcy procedure (i.e. it presupposes the declaration of the debtor as bankrupt), which aims to help the debtor restore its credibility and viability, and continue its operations beyond bankruptcy. However, there are only a few restructuring agreements recorded due to creditors' reluctance to consent to them.

A petition with the Bankruptcy Court for a restructuring plan (article 108 of the Bankruptcy Code) may be filed by:

- the debtor, either as part of its bankruptcy petition or as a separate petition, within four months of its declaration as bankrupt; or
- the administrator of a bankrupt estate, within three months of the debtor's four-month filing window having lapsed.

Once the court approves a restructuring plan, creditors must approve it within three months. Said consent is provided if the plan is approved by creditors representing at least 60% of all the debtor's debts, including 40% of secured claims. Once creditors have consented to a restructuring plan, the administrator, together with the interested party or parties, present it to the court for approval. Once approved, a restructuring plan has the following effects:

- it binds all secured and unsecured creditors, irrespective of whether they approved it or not;
- bankruptcy proceedings end;
- the debtor can start running the business again, unless the plan provides otherwise (the court may give a third party the right to run the business instead);
- unless the relevant creditor objects, claims against the debtor's guarantors and joint debtors are reduced in proportion to the debt reduction proposed under the restructuring plan; and

- creditors cannot take individual enforcement measures against the debtor.

Where do creditors rank in bankruptcy procedures?

The following priority of payments applies during bankruptcy proceedings (articles 154 et seq. of the Bankruptcy Code):

- Costs incurred in the bankruptcy proceedings.
- Preferential claims, i.e. employment, tax and social security claims.
- Secured claims which give the creditor possession of the relevant asset, i.e. pledges and mortgages (hypothecs).
- Unsecured claims.

Are there any circumstances in which a director, parent company (domestic or foreign) or other party can be held liable for the debts of an insolvent company?

Directors of limited liability companies and companies limited by shares can be liable, together with the company, for any tortious act or omission that took place during their management or representation of the company (article 71 of the Greek Civil Code). In addition, a director can be liable for failing to apply for bankruptcy once the company meets the conditions for bankruptcy (article 98(1) of the Bankruptcy Code). This liability will cover the debt accrued between:

- The date when bankruptcy should have been petitioned.
- The date when bankruptcy was declared.

If a court finds that the directors deliberately or because of gross negligence contributed to a company's bankruptcy, it can hold the directors liable to indemnify the company's creditors for the damage the creditors have suffered as a result (article 98(2) of the Greek Civil Code).

A parent company of a general partnership is liable for its subsidiary's debts and will be declared bankrupt together with the partnership (article 7(4) of the Bankruptcy Code). A parent company of any other type of company cannot be held liable for its debts due to the doctrine of separate legal personality unless the tortious or grossly negligent actions or omissions of the parent company caused the subsidiary's insolvency. In this case, the directors can also be held liable for these actions or omissions. Such liability can also extend to other persons who influenced the directors in relation to these actions or omissions (article 98 of the Bankruptcy Code).

Shareholders of companies limited by shares can be held liable for company debts in certain circumstances. In particular, if the court establishes that the shareholders used the company's legal personality abusively to circumvent legal obligations, the court may lift the corporate veil and hold the shareholders liable.

Can transactions that are effected by a company that subsequently becomes insolvent be set aside?

Before the declaration of bankruptcy proceedings on the debtor, with respect to transactions which the debtor has carried out with a third party, creditors can demand to be put back in the position in which they would have been, had a transaction not been carried out, if all the following conditions are met (articles 939 et seq. of the Civil Code):

- The transaction was carried out with the intention of prejudicing creditors.
- The transaction caused the debtor's insolvency.

- The third party beneficiary knew that the transaction was being carried out in order to prejudice creditors.

If the transaction was carried out for no consideration, the third party is liable even if it acted in good faith. The transaction can be set aside whether or not it took place within the suspect period.

An administrator may revoke during bankruptcy proceedings transactions which both:

- took place within the suspect period, i.e. the period following the debtor's cessation of payments.
- are detrimental to creditors

The administrator must revoke the following transactions:

- Donations made by the debtor unless this was given out of social courtesy (for example, a tip) or as part of a moral or legal obligation.
- Payments of debts which are not yet due.
- Payments of due debts by means other than cash.
- The provision of security to formerly existing claims.

Please identify any other important legislative measures adopted?

Greece recently ratified the UNICITRAL Model law on Cross Border Insolvency of 1997 (Statute 3858/2010).

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