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Mourgelas Greek Law Update

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Editorial

Welcome to our first, of hopefully many, Mourgelas Greek Law Updates. I am delighted to serve as editor to this series in order to provide our foreign readers and collaborators with an update on legal developments in Greece, authored by my learned colleagues at Mourgelas and Associates Law Firm. The purpose of the Update is not simply to give a brief overview of the relevant law but to highlight what we think is of commercial or investment value to our foreign colleagues, whether they have clients already operating in Greece or not. The times are rather opportune. Despite the dire financial situation numerous sectors within the Greek economy are booming. In respect of energy matters interested readers should consult our quarterly Mourgelas Energy Law Bulletin.

This first Update concentrates on:

- Insolvency and the use of new conciliation procedures p. 4
- Attempts to introduce and enhance the role of mediation in commercial disputes p. 6
- Regulatory reforms to enhance and simplify the establishment of corporate entities p. 7
- Legislative reforms to stimulate investments p. 8
- The introduction of harsh criminal penalties in respect of doping offences and match fixing. p. 9

As always, we look forward to your comments and suggestions and would be happy to respond to any queries you have on any matter of Greek law and practice.

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Conciliation in Insolvency Proceedings: Restructuring of Debts and Labour Matters

Within the framework of the global financial crisis, the consequences of which are affecting in one way or another almost every business activity and entity and in the midst of which no one is able to make safe predictions about its magnitude and long-term results, the most immediate and direct pursuit of all business people and enterprises is to preserve their current financial and market position or to, at least, minimise any potential adverse consequences. To this end businesses can take advantage of favorable Greek legislation allowing them to restructure their debt to creditors, transform their manpower etc.

Greek insolvency law was recently modified by Law 3588/2007. The fundamental premise of this corpus of law is not triggered by an "excess of debts over assets'', but rather whether there exists a "stop of payments'' or a "threatened stop of payments''.

A "stop of payments'' is considered to exist when: a) debts that have become due are not paid and; b) the reason for non-payment is based on a real inability in a general and permanent manner. Additionally, the inability should concern commercial or business debts that are otherwise due and payable. The element of permanence is not considered to exist when temporary reasons impede a company from duly fulfilling its obligations. The element of generality moreover does not arise where a company is fulfilling in principle its obligations, even if it does not abide by them all.

A "threatened stop of payments'' is considered to exist in situations that give rise to an inability to pay, irrespective of the manner in which this is understood by the company itself and which has not yet led to actual non-payment of debts.

1. Restructuring of debts

a) By way of example the new Greek Bankruptcy Code has introduced a conciliation procedure as an alternative to its insolvency procedure (article 99 of the Code). This provides that a company in "existing or predictable financial inability" may submit an application to the Bankruptcy court in order to conclude and receive approval for a debt settlement agreement between itself and those creditors to whom the majority of the debts are owed, in order to avoid bankruptcy and so as to restructure its debt.

The meaning of "financial inability", which may be existing or predictable, is the principal basis for triggering the Conciliation Procedure and includes any financial inability, i.e. even if it is temporary and partial. This procedure is equally applicable in situations involving a "threatened stop of payments", although it need not reach that stage. On the contrary, this procedure is inapplicable in respect of enterprises that are under a "stop of payments" regime.

A "threatened stop of payments" regime exists whenever inability to pay arises, to the extent that this is has not yet led to actual non-payment of debts. Often, such a case materializes where debts exceed assets and company assets are insufficient to cover obligations. Nonetheless, because of the temporary likelihood of this shortcoming for the company it is best examined on a case-by-case basis.

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The conciliation agreement and the procedure itself could in fact culminate in a decrease of claims by the applicant's creditors, the extension of relevant deadlines for the payments of debts, the restructuring of the applicant enterprise, the capitalization of the creditor's debts, the sale of the company, and others. Such settlement agreement is binding only in respect of the creditors that signed it. It is worth mentioning that the Code entitles the State, public legal entities, public companies and social security organizations to agree in the decrease of their claims, including taxes, surcharges, contributions etc, as well as to waive any rights or benefits, even those pertaining to property.

Once the settlement agreement is ratified by the court some of its principal results (which depend on the relevant creditors having signed the settlement agreement), which may also be imposed by the court under certain circumstances, with the submission of the application for Conciliation, are the following: i) during the term of the agreement measures of compulsory enforcement against the company, the guarantors and co-debtors liable jointly or severally are suspended;
ii) injunctions against the company are equally suspended;
iii) the company is no longer impeded from issuing checks;
iv) suspension of all collective compulsory enforcement measures, including filing for bankruptcy, up to a specified period.
b) Even in cases where the above (under (a)) criteria are not met, or as an alternative to the above solutions, it may be wise for a company to examine a debt-restructuring plan whereby it could re-negotiate its obligations towards its creditors (including banks) using the negotiating tools it is entitled to in each case, such as liquidity, ability to provide guarantees, business opportunities etc. On the other hand, even in cases of financially sound and healthy enterprises one is likely to face problems with clients who have difficulties in fulfilling their obligations. In the event where this is the case with existing clients a company could examine the possibility of re-negotiating its contracts. Equally, where such contracts have already led to claims the company may engage in a systematic and timely collection of such claims. On the other hand, when companies enter into new contracts they should exercise caution in the drafting of their terms and conditions so as to secure the possibility of collecting consideration from such deals.

This requires much more specific and detailed terms and conditions as well as possibly the introduction of performance warranties or /and guarantees, the imposition of sanctions in the event of failure, alternative dispute resolution procedures, etc.

2. Restructuring of work force

Another option which more and more seems to gain prominence is the attempt by companies to reduce their operational costs through the re-structuring and re-organization of their work force. To this end and in order to avoid, where possible, the termination of existing employment agreements and jeopardize the relationship with one's employees, companies could examine alternative solutions, such as the introduction of flexible working hours or part-time employment, re-organisation of central administration through the devolution of more powers into the hands of fewer managers, reduction of salaries, etc.

Of course, since all of the above could be detrimental to a company's employees one should be very careful and must examine the terms, conditions and procedures that have to be followed so as to be in compliance with the Law.

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New Mediation Bill set to Change Greece's Strong Pro-Litigation Culture?

Unlike other European jurisdictions the use of mediation in Greece is relatively unknown. Although Articles 208-214 of the Greek Code of Civil Procedure make some room for out-of-court settlement by the parties this is generally restricted to abstract means by which the parties may reconcile their differences, with mediation being a possible alternative. Yet, it is non-existent in practice because lawyers are not familiar with it and neither are their clients. Equally, until recently there did not exist a college of qualified mediators, not to mention a clear legislative framework.

Following the adoption of European Directive 2008/52/EC the member States of the EU are under an obligation to implement mediation procedures within their domestic laws. A panel of legal experts in Greece has for sometime been working on a bill the aim of which is to amend and supplement the relevant portions of the Code of Civil Procedure and give prominence to mediation.

The bill provides that the judges before whom a suit is pending must first offer the choice of conciliation and mediation to the parties before proceeding to hear the case. The court can only hear the case if the attempt to conciliate or mediate fails. For one thing, in order to formalise the procedure it is envisaged that mediation must be instituted on the basis of an agreement. The bill provides that the parties may agree to mediation until such time as the merits of the dispute are heard by the civil courts. If they decide to proceed to mediation they will appoint a third party as mediator. It is envisaged that although the parties may by common accord choose any person to act as mediator this person must be an attorney-in-law, be eligible to act as an arbitrator and be free from any relevant conflicts. The bill does not elaborate whether the mediator must be registered as an attorney in any of the lawyers' bar associations of Greece, or whether a European or other lawyer may also act under such a capacity. Given the likelihood of transnational commercial and civil conflicts it is doubtful that the legislator can restrict the parties' choice to Greek attorneys. Such an insistence would make impractical sense, since if the parties are intent on employing a non-Greek lawyer as mediator they can just as well proceed to mediation abroad and subsequently ratify that outcome in Greece.

According to the terms of the bill, once the mediating process has come to an end and the parties are content with its outcome they must all sign and ratify the final document. Each party may thereafter submit the original mediation document to the civil court before which the suit is pending so that the judge can render it legally enforceable, just like any other arbitral award. It is hoped that the change in the law and the training of lawyers and judges on the modalities and benefits of mediation will result in its more extensive use. This is after all the objective of the bill and the European Directive.

Greek courts are notoriously over-burdened with suits that can take years to resolve. Mediation, if widely advertised, can provide an excellent alternative to speedy resolution of disputes, both big and small, and foreign lawyers should be made aware of this development which is set to change Greek litigation culture.

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Major Regulatory Reforms to simplify Procedures regarding the Establishment, Licensing and Operation of new Businesses and the Transparency of the Public Sector

In order to promote and support entrepreneurship and to combat bureaucracy, the Greek Government recently announced initiatives for simplification of the procedures relating to the setting up of new businesses, particularly through a drastic reduction of the number of hurdles required, which is expected to cut down on administrative costs by 70%! According to a recent statement of the new Minister of Economy, Competitiveness and Shipping, "by using an electronic registry, supported by the appropriate software and process reengineering, in close collaboration with Chambers of Commerce, the time required to open up a business in Greece will be reduced from 38 days to 1 day and the relative steps from 15 to 1"!

Up to 4.000 new société anonyme companies and 20.000 limited liability companies per year are expected to benefit from the proposed changes.

Pursuant to the draft bill that is expected to be presented to Parliament by May 2010 the main modifications will concern the introduction of commercial registers in local chambers of commerce, which will act as one-stop-shops for all activities related to the establishment of a limited liability company.

The Articles of Association will no longer have to be signed in the presence of a Notary public nor submitted for registration to the Court of First Instance in respect of limited liability companies or the Prefectures for société anonyme companies.

A template contract for the Articles of Association will be available at the one-stop-shops. Furthermore, additional measures will be taken to streamline tax and administrative charges.

Simplifying drastically licensing procedures for business will be similarly completed by June. In order to ensure transparency in public sector procurement the Government also announced that an electronic system of publishing all tenders and invitations for bids on the Internet will be implemented in the near future.

Eftychios D Horiatakis

Legislative Reforms aiming to Boost Investments in Greece

An ambitious public investment program totalling 10,3 billion Euros in 2010, supported by both national and EU community structural funds, is included among specific measures that the Greek Government is going to implement as part of its Stability and Growth Program, which was submitted and approved by the European Commission in February.

The main financial instrument for all sectors of economic activity continues to this day to be the so-called “Development Law” (L. 3299/2004), providing financial aids and incentives in various forms (including cash grants, leasing subsidies, tax allowance and labour cost subsidies) to investments exceeding certain thresholds. This law has often been criticised as bureaucratic and complicated and it is no wonder that the new Minister of Economy announced that a new draft bill on investments will be presented to Parliament around May 2010. The new law will seemingly be more favorable to investments, simplifying and speeding-up the procedures for the examination of relevant applications for financing.

Considerable public funding (of an overall budget of 26,2 billion €) for several investment projects is also expected to derive from the Greek National Strategic Reference Framework (ESPA) under the 4th European Community Support Framework from 2007 to 2013. In March 2010 a new draft-bill was submitted to Parliament, amending L. 3614/2007, with a view to the decentralisation, simplification and boost of the efficiency of ESPA-related procedures.

Furthermore, additional funding is mobilized through Public Private Partnerships (PPPs) and the European Investment Bank, as well as by other sovereign and private wealth and equity funds. Within the next two months 100 million Euros will become available through “JEREMIE” (Joint European Resources for Micro to medium Enterprises), whereas “JESSICA” (Joint European Support for Sustainable Investment in City Areas) will be launched by June.

Small and very small enterprises can benefit from other national grants available from time to time, e.g. through the Credit Guarantee Fund of Small and Very Small Enterprises (ΤΕΜΠΜΕ Α.Ε.).

Eftychios D Horiatakis

Upcoming Sports Legislation on Doping and Match Fixing

The basic legislation regulating amateur and professional sporting relations in Greece is based on Law No 2725/1999. Following a number of incidents concerning the use of banned substances by athletes and match fixing allegations in the field of professional football, the government has made it clear that it intends to amend the 1999 Law in numerous ways and put an end to the activities of those persons whose sole purpose is to financially prosper from the uncontrolled commercialisation of sports at the expense of athletes and the public at large.

The government has opted for public consultation in respect of those matters which it deems as requiring urgent attention. Among others the new amendments envisage the criminalisation of activity structured around an organised group of persons whose aim is to engage in fixing of match results and of other sporting activities.

The concretisation of the distinct offence of setting up an organised criminal group with the purpose of engaging in, or facilitating, the various doping offences as these are specified in Article 128 Θ of the 1999 Law enhance the panoply of criminal sanctions against this conduct. It seems that one of the main concerns of the legislator is to protect the integrity of human health, particularly of young persons, who become easy prey to professional coaches and sports promoters.

The new amendments are poised to have a significant impact on the regulation of all substances associated with sports and the way these are administered.

Moreover, the proposals included in the public consultation set out to criminalise to the highest degree of the criminal law the intentional and pre-arranged alteration of a sporting result (match fixing) through betting in Greece or abroad. The offence persists irrespective if the fixing has come about as a result of unlawful or legitimate conduct.

This legislation is particularly crucial because past experience shows that organised groups that engage in fixing results operate not only in Greece but also abroad. The expansion of the jurisdictional ambit of Greek courts now means that Greek prosecutors can make use of the European Arrest Warrant (in respect of the provisions relating to non-listed offences) in order to seek the surrender of the culprits. Although the new amendments are silent on the implications for betting agencies they are bound to have a salient effect on local and international agencies given that likely prosecutions will require personal information belonging to the accused persons.

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