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PRACTICE NOTE ON INSOLVENCY PROCEEDINGS IN GREECE

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There are three ways that a company can deal with insolvency under Greek law (which closely parallels French bankruptcy law):

- Voluntary liquidation
- Conciliation procedure leading to a conciliation agreement
- Bankruptcy proceedings leading to a restructuring plan or liquidation

Liquidation

The shareholders of a company can approve the voluntary liquidation of the company when the company still has sufficient funds to pay all its outstanding debts. The shareholders appoint a liquidator to collect all amounts owed to the company and to sell all the company's assets, to pay all debts, to terminate all contracts, and to distribute any remaining proceeds to the shareholders.

Conciliation Procedure under Article 99

The Greek bankruptcy code allows a company that is not yet unable to fulfill its payment obligations to apply for protection under Article 99 (similar to Chapter 11 in the United States and « procédure de conciliation » in France). This is a "pre-bankruptcy" proceeding. If it agrees to grant the petition, the bankruptcy court will appoint a "mediator" who will have up to four months to negotiate a conciliation (restructuring) plan that must be approved by creditors representing a majority of the debt payable by the company, and by the bankruptcy court. The plan is not mandatory for the creditors who do not approve the plan, who are able to pursue their claims against the company upon the expiration of the period of protection prescribed by the court. In other words, creditors can decide to take the risk that they will recover more than they would under the restructuring plan, but they may recover less.

During the conciliation procedure, the company may continue to operate and to manage its business; creditors owed money before the date of the petition would not be able to pursue claims to collect, but costs incurred by the company after the date of filing would be payable.

Bankruptcy Proceedings

When a company is unable to fulfill its payment obligations ("cessation of payments") and such inability is general and permanent, it must file a petition for the commencement of bankruptcy proceedings within 15 days. Failure to file on time would subject the members of the Board of Directors of the company to personal liability for debts created from the date when the petition for bankruptcy should have been filed.

If the petition is granted, the bankruptcy court will appoint a receiver who will take over the management of the company and the disposition of its assets. (The Board of Directors of the company nevertheless remains in place.) The receiver will determine whether the creditors' claims can be satisfied better 1) by agreeing to a restructuring plan that would permit the company to survive and allow the creditors to recover at least a portion of their claims, or 2) by liquidating the company's assets and distributing the proceeds to creditors. The restructuring plan must be approved by creditors representing at least 60% of the company's total debt, and ratified by the court, and is binding on all creditors, including the creditors who did not execute the restructuring plan (unlike a conciliation plan under Article 99, which is not binding on creditors who do not sign the consolidation plan).

It should be noted that any transactions or other acts of the bankrupt company which took place during the "suspect period" to be determined by the court of up to two years leading up to the declaration of the bankruptcy and are prejudicial to the creditors of the company, are subject to revocation by the bankruptcy receiver.

2 October 2013