REFERENCES TO ARTICLES 99, 100, 101, 102 AND 106I OF THE GREEK BANKRUPTCY CODE

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1. Introduction

Preventative measures can be taken to prevent the insolvency of the debtor so as to ensure the reputation of enterprises or natural persons and trust to third parties. Such measures are provisioned in the Greek Bankruptcy Code (Gr.B.C), art. 99ff, and in the Greek Civil Code, art. 361.

The agreements for such measures, which are regulated by art 361 of the Greek Civil Code, bind only the contracting parties, in case they are not adopted by the other creditors. However, the pre - bankruptcy procedure (hereinafter restructuring procedure) is a contractual procedure, which is provided by art. 99ff GR.B.C, as amended by the Laws 4013/2011 and 4072/2012, and has binding effects on all the creditors of the debtor.

Recourse to the proceeding provisioned by Art 99 has become quite popular, especially among big enterprises, as it provides the possibility of protection against enforcement measures by creditors.

2. Art 99 - Restructuring Procedure

The amended statute provides the conditions for entering the procedure. Art. 99 par. 1 GR.B.C provides that the debtor must be facing a current or an imminent inability of discharging its due and payable pecuniary obligations in a general manner, this inability proven by the debtor's cash flow projections. This means that, this financial inability could be connected with the total of pecuniary obligations of the debtor or of a serious part of them or could be the only but the most important payable account of the debtor.1To be applicable the restructuring procedure should have spent at least five years from the ratification of agreement or less in special cases.

The amended statute adds a further possibility. Debtors, that have ceased, payments might still apply to enter pre - bankruptcy procedure providing that they

1 S.Psychomanis, Bankruptcy Law, 5th Ed. (2012), p. 68-71

have also filed a bankruptcy petition at the same time. The court will judge on how this condition will be regulated (art. 99 par. 6GR.B.C). The basic idea behind this is the fact that the restructuring process may lead to better and fairer results for both the debtor and the creditors, even if the debtor is just a step away from bankruptcy.

This procedure aims at the continuation of the debtor's viability, as well as at the provision of a second chance to enterprises. The above proceedings should not adversely affect the satisfaction of the creditors collectively. In particular the agreement should not put any creditor in a worse position than the one he would have been put in case of a bankruptcy liquidation or compulsory enforcement. This means that the Law cares for the greatest possible repayment of the creditors' assets.

These goals are not contradictory given that the creditors will be satisfied at a greater extend, in case their debtor manages to survive. These goals are verified at the opening of the procedure and at the ratification of the agreement (art.99 par. 2 GR.B.C).2

The restructuring agreement could take place in three stages. First, the debtor may obtain ratification for the restructuring agreement agreed by the qualified majority, without judicial assistance or protection (pre- packaged plan - art. 99 par. 4 and 106d GR.B.C). Another alternative way, is through the submission of an application for the opening of negotiations with creditors (art. 99 par. 5 GR.B.C) . If the second way is chosen, the options available are two: either the applicant or the court at its own initiative may appoint a mediator to facilitate negotiations. The negotiations may be done with the creditors as group or on a bilateral basis between contracting parties as may satisfy the qualified majority requirements (art. 105, 106, 106a GR.B.C).

3. Art 100 , 101 - Application and decision for the opening of the procedure

The debtor submits the application, which should include various information regarding the financial status of the debtor. The information should refer to the pecuniary obligations of the debtor and to the claims of the creditors (financial statements). Moreover, the debtor must submit an expert report accompanied by a list of the debtor' s assets and the creditors, with a special reference to secured creditors. In this application, the expert gives his opinion about the viability of the enterprise, the market conditions and about whether this procedure shall adversely affect the satisfaction of the creditors collectively (art. 100 par. 2 and 3 GR.B.C).

In addition, it is compulsory for the debtor to include in the application the appropriate bill whose price is related to the type of debtor (art. 100 par. 5 GR.B.C). The application should be heard within two months from the date of its submission, whereas the court may summon some of the

2 E. Perrakis, ,Bankruptcy Law, 2th Ed. (2012), p. 57

creditors (art. 100 par.6 GR.B C).

The decision of the court is issued within fifteen days from the day that the application is heard (art. 54 par. 2 GR.B.C). In case it is dismissed, an appeal could be lodged (art. 101 par. 3 GR.B.C) .

On the other hand, if this procedure does not adversely affect the satisfaction of the creditors collectively and there is reasonable prospect of success of the restructuring procedure, the court will accept the application. The opening of the procedure will last up to 2 months from the issue of the judgment. Under special circumstances, the court could prolong the two-month-period for one more month (art. 101 par. 1 GR.B.C) .The restructuring agreement must be reached within the above timeframe, otherwise, the process is declared as unsuccessfully terminated. Furthermore, the court could appoint a mediator or an assignee or order the preliminary measures of the art. 103 GR. B. C.3

4. Art 102, 106i - Expert, mediator and assignee

The applicant or the court at its own motion may appoint a mediator, who facilitates negotiations between the debtor and the creditors. This appointment could be part of the decision of the opening of the procedure or a posterior judgment could be issued for this matter (art. 102 par. 1 GR.B.C). If the debtor applies for the appointment of a mediator the court is obliged to appoint one (art. 102 par. 3 GR.B.C) .

The administrator - assignee is 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 decision of the court regulates the whole duties of the assignee.

The expert (financial consultant) is chosen by the debtor and can be either a credit institution or auditor/auditing firm (art. 100 par 4 GR.B.C)

The expert, mediator and assignee (administrator) should have moral values and perform their duties with impartiality, conscientiousness and objectivity. Moreover, they should not notify the information they acquire exercising their duties, if they are not necessary for the restructuring agreement (art. 106 par. 2 and 6 GR.B.C).

Furthermore, these people should be independent from the debtor, so as their integrity to be ensured (art. 106 par. 1 GR.B.C) and the court should decide on their fee which credits to the fortune of the debtor (art. 106 par. 3 and 5 GR.B.C).4

5. Conclusion

3 S.Psychomanis, Bankruptcy Law, 5th Ed. (2012), p. 85-88.
4 L. Kotsiris,Bankruptcy Law, 8th Ed. (2011), p. 592-593.

The restructuring procedure, as presented above, includes some specific steps and proceedings. Each action aims at the agreement between debtor and creditor and at the settlement of their conflicting and pecuniary interests, with the least possible cost. The success of this rescue proceeding will be the viability and the function of the enterprise.

This new pre - bankruptcy procedure represents a great improvement over the previous conciliation proceeding and the agreement provided by art. 361 of the Greek Civil Code. However, this procedure has very serious impediments to overcome in order to make a significant contribution to keeping the debtor operative and rescuing enterprises.

The most difficult obstacle is the fact that the whole process is dependent on the slow- moving Greek judicial system, since the courts are packed with cases and their hearing is set for rather distant dates . Last but not least, quite often third parties are prejudiced against the procedure under examination, whereas they strongly believe that it launches the imminent ending of their debtor.

Only time will tell whether the new procedure will surpass these practical obstacles and enable efficient rescues, along with avoiding abusive uses noted in the past.