

**SOME REMARKS CONCERNING THE LEGAL NATURE OF
THE CONSOLIDATION AGREEMENT
(ARTS 99FF GR.B.C)**

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Introduction

Enterprises or natural persons, whose default is regulated according to the provisions of the bankruptcy law, have a chance to avoid the unpleasant consequences of a bankruptcy procedure, if they follow a consolidation procedure before the initiation of the bankruptcy. The consolidation procedure is provided by the Greek Bankruptcy Code (Arts 99ff), as amended by the Law 4013/2011. It is a conventional institution aiming to the prevention of the commencement of the bankruptcy procedure. The consolidation procedure is actually a bargaining stage, which is expected to help the parties to reach a mutually satisfactory agreement. A similar bargaining stage is provided by the US American US C sec 1121ff permitting the parties to file a reorganization plan for the enterprise, which faces economic difficulties. The establishment of a settlement for claims constitutes the most important goal of the relevant procedure (sec 1123).

The procedure in headlines

The opening of the consolidation procedure is declared by the bankruptcy court under the condition that an agreement is probable and the procedure of the collective satisfaction of the creditors' claims shall not be modified to the detriment if the creditors (Art 101 par. 1 Gr. B. C.). The court's decision opens actually a bargaining stage between the interested parties, which, according to the aforementioned rule, shall not last more than four months and shall be conducted by a mediator. The aforementioned time limit shall be extended by the court under certain conditions (e.g. application submitted by the debtor and the majority of the creditors) according to Art 101 par. 1 Gr. B. C.

The court on its own motion or after the application of the creditors or of the debtor shall appoint a mediator (Art 102 par. 1 Gr. B. C.). The appointment of the mediator is obligatory for the court as long as the debtor has requested it¹. The mediator shall help both the creditors and the debtor to come to an agreement (Art 101 par. 4 Gr. B. C.). The mediator who recognizes that the achievement of an agreement is not possible, may ask the court to revoke his appointment (Art 102 par. 5 Gr. B. C.).

With the opening of the consolidation procedure every person who has legal interest may ask the court to suspend the measures of personal satisfaction of claims for all debts emerged before the submission of the application concerning the opening of the consolidation procedure. During the bargaining stage the time limit for the prescription of claims is also suspended and the transfer of ownership of real estates or of the equipment of enterprises is not allowed (Art 103 par. 1 Gr. B. C.). During the time limit of Art 101 par. 1 Gr. B. C., a consolidation agreement plan has to be confirmed by the court. Otherwise, the whole procedure is to be regarded as unsuccessfully finished (Art 104 Gr. B. C.).

The consolidation agreement is to be considered valid as soon as it has been approved by the creditors' assembly, consisted of creditors whose claims have been already existent at the opening of the procedure. Furthermore, the creditors' claims are to be registered in the creditors' table (Art 105 par. 2, 3 Gr. B. C.). The mediator shall take care of the official invitation of the creditors. The invitation has to be received 15 days before the date of the assembly meeting (Art 105 par. 4 Gr. B. C.).

The works of the assembly meeting are opened under the condition that the present creditors represent the 50% of the whole of the creditors' claims and the consolidation agreement is to be regarded as approved by the assembly as soon as a certain percentage of the present creditors has accepted the reorganization plan of the debtor's enterprise (Art 106 par. 4 Gr. B. C.). The agreement has to be signed by the debtor and to be submitted to the court, which shall confirm it (Arts 106 α and 106 ζ Gr. B. C.) under the condition that the viability of the debtor's enterprise is possible and the agreement does not breach the rules of fair competition. Furthermore, the court shall not confirm the agreement, unless it leads to the raise of the suspension of the debtor's payments (Art 106 ζ par. 3 Gr. B. C.).

The confirmed agreement binds the whole of the affected creditors regardless of their vote or of their absence from the meeting of the creditors' assembly (Art 106 η Gr. B. C.).

The consolidation agreement as a compromise

The consolidation agreement may change the conditions of the debtor's payments (Art 106 ϵ Gr. B. C.). The rule includes an indicative enumeration of the conditions, which constitute the content of the agreement such as the reduction of claims, the capitalization of debts through the issue of shares, and in such a case, the regulation of the priorities concerning the payment of debts. The agreement may also provide the transfer of the whole or of a part of the enterprise to a third person or the appointment of a new administrator. Concerning the formalities connected with the conclusion of the agreement, a private document signed by all interested parties is enough according to Art 106 ϵ par. 6, under the condition that certain legal provisions do not prescribe other formalities for the validity of a certain agreement.

Through the consolidation agreement, the dispute between the debtor and the creditors is settled on the grounds of mutual concessions associated

with the conditions of the debtor's payment, i.e. the reduction of claims or the administration of the enterprise. Consequently, the agreement bears the main features of the compromise as regulated in the Greek Civil Code. Obligations undertaken in the frame of the consolidation agreement constitute terms and conditions of the compromise². Their formation and development are governed by the general and special rules provided for civil transactions. If, for example, the debtor has to transfer the ownership over an immovable thing, both promissory and dispositive contracts are subject to notarial form (Arts 369 and 1033 Gr. Civil C.). The compromise can be declared as null and void under the condition that, according to the terms of the agreement, facts, which constitute the basis – or in other words the motives – of the agreement, do not correspond to the actual facts (Art 872 Gr. C. C.). Art 872 Gr. C. C. introduces an exception to the rule formulated by Art 143 Gr. C. C., according to which an error pertaining exclusively to the motives of the declarant shall not be considered as substantial.

The consolidation agreement as a collective act

Binding effects of the agreement enter after its confirmation by the court. The decision has a declaratory character. Binding effects of the agreement do not concern only the persons who have approved it. Provisions of a confirmed agreement bind any creditors' claim born before the inauguration of the consolidation procedure, whether or not they have accepted the agreement (Art 106η Gr. B. C.). The US American USC (Sec 1141) comprises a similar regulation concerning the effect of a confirmation for the organization plan over creditors who did not accept it. Binding effects of an agreement over parties who did not accept it are provided by the Greek law in the case of collective acts.

As already mentioned, the consolidation procedure, as provided by the Gr. B. C., is a conventional institution aiming, through the settlement of the parties' disputes, to the prevention of the commencement of a bankruptcy procedure. The final settlement of the dispute presupposes the existence of a collective act between the creditors and the debtor. According to the Greek Civil Law doctrine based on the rules which regulate the community of rights, the collective act binds all of the participants regardless of the fact that a part of them did not accept the terms and the conditions of the settlement³. The rules of the law of contracts, as well as those of the Greek Bankruptcy law, provide the conditions for the validity of the consolidation agreement.

² Psychomanis, op. cit., p. 115

³ I. Deliyannis/P. Kornilakis, Law of Obligations, Volume IV (1998), pp. 124/125

Conclusion

The consolidation procedure provided by arts 99ff Gr. B. C., as well as every method for the settlement of disputes based on the contractual freedom, shall be considered as an effective method for the conciliation of controversies, as long as the judicial system offers effective remedies for the adjudication of controversies emerging in the case of abuse of power or any other unlawful behavior caused by the parties who participate to the conciliation procedure.