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The new Greek Insolvency Framework

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Abstract

On June 20, 2019, the European Parliament and the Council adopted the Directive (EU) 2019/1023 (the "Restructuring Directive"). One of the main goals of the Restructuring directive is to increase the efficiency of restructuring, insolvency and discharge instrument of the member states, which may qualify as an admission that in some cases they are out-of-date or lack the appropriate human resources. Given the weaknesses of the Greek framework, the Restructuring Directive was going to require a substantial response from the Greek government and legislators.

Against this background, the Greek government decided at the end of 2019 to engage a small team of legal experts to propose a new insolvency and restructuring framework. The draft produced was subjected to extensive public deliberation and was finally adopted on October 27, 2020. It has since been put into effect in its entirety. The new law purports to transpose the Restructuring Directive and it would appear that Greece is the only member state to have done so by the original deadline of June 2021.

In this article, the authors provide a broad outline of the new Greek insolvency framework. In light of the interest that the implementation of the Restructuring Directive may have for a broader international audience, the authors pay particular attention to the ways in which the DSL implements the provisions of that Directive.

1. Introduction

In 2017, the IMF issued a country report on Greece (the "IMF Report") that focused, among other things, on the deficiencies of its insolvency and restructuring framework.[1] The findings of the Report were clear and damning. The heading to one of the sections reads: "*A series of reforms without the intended effects*".[2] As to business insolvency, the Report concluded that "*the insolvency system is not able to perform its fundamental economic function, namely to offer creditors the most efficient means of recovery, which implies the preservation of viable enterprises and the liquidation of those that are not viable, with the consequent redeployment of resources to more productive uses.*"[3] As to consumer over-indebtedness (which was addressed under a special law outside the Greek Bankruptcy Code[4] ("GBC"), the Report found that "*the personal insolvency framework has been over- and misused. ...[I]instead of providing a second chance for individuals who are experiencing over-indebtedness so that they can return to productive activity, the system appears to be used to fend off creditor actions and preserve assets. This does not provide a lasting solution to the indebtedness problem for either creditors or debtors, while absorbing judicial and administrative resources.*" Previous commentators were equally sanguine about the performance of the Greek insolvency and restructuring framework: "*The existence of key problems of legal design, some serious institutional shortcomings, and the absence of a well-established "rescue culture" are possibly amongst the main causes for the system to be grossly*

[1] IMF Country Report No. 17/41 GREECE, available in: https://www.imf.org/~/media/Files/Publications/CR/2017/cr1741.ashx.
[2] IMF Report p. 4.
[3] IMF Report p. 12.
[4] Law 3588/2007, which has now been superseded by the law 4738/2020 (defined below in the text as "DSL").

underused, the vast majority of cases to end in value-destructive piecemeal liquidations (or, worse, stasis), and the newly created rescue procedures to be used often more as a way to avoid any solution than to revive the business. Neither debtors nor creditors seem to regard the current legal framework as an adequate mechanism to tackle financial crisis."[5]

On June 20, 2019, the European Parliament and the Council adopted the Directive (EU) 2019/1023 (the "Directive"). One of the main goals of the Directive is to increase the efficiency of restructuring, insolvency and discharge instrument of the member states, which may qualify as an admission that in some cases they are out-of-date or lack the appropriate human resources.[6] Given the weaknesses of the Greek framework, the Directive was going to require a substantial response from the Greek government and legislators.

Against this background, the Greek government decided at the end of 2019 to engage a small team of legal experts to propose a new insolvency and restructuring framework.[7] The draft produced was subjected to extensive public deliberation and was finally adopted on October 27, 2020.[8] It has since been put into effect in its entirety.[9]

The DSL purports to transpose the Directive and it would appear that Greece is one of only several member states to have done so by the original deadline of June 2021.[10] In this article we provide a broad outline of the new Greek insolvency framework. In light of the interest that the implementation of the Directive may have for a broader international audience, we pay particular attention to the ways in which the DSL implements the provisions of that Directive.

2. What the DSL purports to accomplish

The DSL is intended to address in a holistic fashion the imminent or actual inability to meet debts by any person, legal or natural, and the discharge of individuals from their debts. The only prerequisite applicable to legal persons is that they pursue an economic purpose. The meaning of economic purpose is not provided in the DSL, but it would seem to invite a broadly cast definition so as to encompass all legal persons that may be exposed to over-indebtedness. One of the main design features of the new law is that there are no special proceedings for non-merchants and that legal and natural persons are treated in the same manner.[11]

The new framework incorporates all proceedings and tools that either aim at the prevention and avoidance of insolvency or deal with its consequences.[12] Its main features are the simplification of procedures with a view to maximizing speed and the extensive use of digital tools. The DSL

[5] Paulus et al, IIR 2015, 24(1), pp. 1-27, p.13.
[6] Paulus, in: Paulus/Dammann (eds.), European Preventive Restructuring, 2021, p. 3.
[7] The core team members were the authors of this article. We should note that many other experts made significant contributions, as well as the continuous and critical support and contributions to the effort by the Special Secretary for Private Debt Dr. Photis Kourmousis and the legal counsel to the Special Secretariat, Ms. Theoni Alampasi.
[8] As law 4738/2020 (the "DSL").
[9] DSL Article 308, as amended; as that article provides, a major part of the DSL came into effect March 1, 2021, while the balance came into effect June 1, 2021. The DSL also provides (cf. DSL Article 218ff.) for the concession to a private entity of the duty to acquire primary residences from vulnerable debtors in certain circumstances, including their bankruptcy. That concession is still work in progress at the time of writing of this presentation (August 2021).
[10] The others are Austria, France and Germany: https://eur-lex.europa.eu/legal-content/EL/NIM/?uri=CELEX:32019L1023.
[11] See for example DSL Article 76 which attributes the capacity to be rendered insolvent to all natural persons and not just merchants as under the previous law; similarly, DSL Article 78 which deals with issues of procedure and court competence, provides for the same treatment of both consumer and commercial debtors.
[12] The introduction of consumer bankruptcy must be seen as an important development. The earlier regime, introduced by law 3869/2010, that has been superseded by the DSL, proved highly problematic: "The law is not only prone to abuse, it also fails to provide full discharge of the debtor's liabilities (as the scope of excluded debts is remarkably broad, including all of the debts to the state). There is a clear and pressing need for the expansion of insolvency law to allow the inclusion of consumers and non-merchant entities, such as not for profit organizations. However, the discussion of this problem and its likely solutions lies outside the scope of this discussion, limited as it is to the examination of existing proceedings under the Insolvency Code." Paulus et al, IIR 2015,6.

introduces a digital platform which operates as a register and means of publication of all procedural steps, including any court decisions and orders of the supervising judge, as a means of communication with interested parties as well as a voting platform for creditor assemblies. Moreover, auctions of the assets of the insolvent debtor are done on the e-auction platform to ensure maximum transparency and publicity.

The DSL introduces certain early warning mechanisms, which primarily consist of the availability of measurement by an electronic tool of the risk of insolvency provided by the Special Secretariat for the Management of Private Debt[13] and relate advice on how best to address those risks provided by chambers of commerce.[14]

3. The preservation of viable businesses

A major objective of the DSL is the preservation of viable businesses. The DSL introduces two different tools to serve that goal: an electronic platform that facilitates out-of-court settlements (with no court involvement) (the "OCW")[15] and a court ratified restructuring procedure (the "Restructuring Proceeding")[16]. A viable business can also be sold as a going-concern by the insolvency administrator as part of the liquidation of the insolvent debtor's assets.

3.1 The OCW

A critical element of the new law is the introduction of new out-of-court workout procedure (the "OCW"). The new process requires an application but no proposal from an interested debtor. Following that, the creditor financing institutions decide whether to formulate a proposal – if adopted by a 60% majority of such institutions (by value of claims in all cases) it is sent to the debtor for its acceptance. If accepted and provided that certain other conditions are also satisfied[17], the proposal becomes binding also on dissenting financial institutions, if any, as well as on the tax authorities and the social security funds.[18] The financing institutions can employ an algorithm for the production of the settlement proposal, in order to ensure there is no discriminatory treatment of all applicants as well as the satisfaction of certain tests required for the automatic acceptance by the state (such as the best interest of creditors test).[19]

The whole process is totally out-of-court, while it is concluded within a maximum period of two and a half months. It is also confidential and produces no effects for non-participating creditors (such as employees and trade creditors). It produces a temporary stay on enforcement by participating creditors – for the period of pendency of the brief negotiation period. As it is purely consensual (subject to the ability of the majority of participating financing institutions to bind the minority and the public creditors) there is no obligation to formulate a proposal and the application can be immediately rejected.

The OCW is available to both commercial and consumer debtors and may be seen as a tool that serves to address distressed debtors who lack the size to justify the extra cost involved in the restructuring process. It can also be employed at an earlier stage and avoid the adverse publicity that usually accompanies restructuring proceedings that include court hearings and ratification.

3.2 The Restructuring Proceeding

The availability of a restructuring process that is subject to confirmation by a court or public authority is one of the main targets of the

[13] A secretariat within the Ministry of Finance.
[14] DSL Article 4.
[15] DSL Articles 5 through to 30.
[16] DSL Article 31 through to 64.
[17] The institutions that agree to the proposal must also include 40% of the financial institutions that hold security for their claims.
[18] Among other such requirements, the total tax and social security claims should not exceed 1,5 million Euros and should be less than the sum of all claims of the financing institutions involved in the OCW process, see Art. 21 DSL.
[19] See Art. 21 DSL.

Directive.[20] The DSL provides such a proceeding and we discuss below some of the core features of the DSL Restructuring Proceeding.

3.2.1 Content of the restructuring application and the role of the third parties (external expert and special trustee)

Art. 45 DSL details the content of the restructuring application which is submitted by the debtor[21] or any contracting creditor to the court. Practically, all information listed in Art. 8 par. 1 of the Directive is included in the application. It shall be noted that the information is not included in the restructuring plan itself, as envisaged by the Directive, but in the application which is submitted to the court. This is not particularly significant, since all interested parties (especially dissenting creditors) can have access to both the restructuring application and the restructuring agreement which are submitted to court.

With regard to the information relating to the financial situation of the debtor, Art. 8 par. 1(b) of the Directive requires that the plan includes information on "the debtor's assets and liabilities at the time of submission of the restructuring plan". Of course, drafting a list of assets and liabilities as of a certain date, especially in larger corporations, cannot be concluded on the same day. Furthermore, in Greek law, the accuracy of the creditors' list has to be certified by an external expert (usually, an auditor), which also requires a certain period of time. That is why the law provides that this list is dated up to three months before the submission of the restructuring agreement to court (Art. 34 par. 3 DSL). The creditors' list is very important, since the necessary majority of creditors is calculated based on that document. In line with this provision, Art. 45 par. 1 (b) DSL provides that the assets' and liabilities' list included in the restructuring application shall be "as recent as possible and in any case not beyond three months [before submission of the application]".

At this point, it shall be noted that the role of the expert's opinion in Greek restructuring practice is crucial. In particular, the external expert must confirm that the ratification conditions are met (Art. 48 par. 1 DSL). This is of great assistance to the court, since the expert inter alia verifies that the debtor's business is expected to become viable, in case the plan is adopted, and also that the "best-interest-of-creditors test" is fulfilled. For the purpose of assessing the liquidation value of the business, the expert might rely on other experts (e.g., on an appraiser's opinion with regard to real estate assets). Of course, according to the Directive, Member States are not obliged to require an expert opinion regarding the viability of the business or the value of the debtor's assets (Art. 8 par. 1(h) and art. 14 par. 2). However, given the fact that in Greek practice there have been cases of inaccurate creditors' lists or of overoptimistic projections, and also given that businesses resorting to the restructuring procedure are, as a rule, significant for the economy, the legislation provides that the appointment of an expert is obligatory.

With regard to the rest of the information included in the restructuring application, Art. 45 DSL adopts the list of Art. 8 par. 1 of the Directive. Affected parties, classes of creditors, non-affected parties, the terms of the plan, new funding (if applicable) and the viability statement are the most important items included. The Directive also includes, as an optional item in the restructuring plan, the "identity of the practitioner in the field of restructuring" (Art. 8 par. 1(f) of the Directive). In this matter, it is worth to examine the role of these practitioners in Greek restructuring practice.

In Greek law, a "special trustee", who is qualified as an insolvency administrator, may be appointed by court, tasked with: i) managing the debtor's affairs (partially or

[20] The Directive, Recitals 48 ff.

[21] Exceptionally, creditors can submit the application without the consent of the debtor; see below par. 3.2.3.

fully), while the ratification of the agreement is pending (Art. 51 DSL), or ii) preserving the debtor's assets or supervising the implementation of the agreement, after its ratification (Art. 55 DSL). In some sense, the special trustee acts like a CRO. In both cases mentioned, the special trustee's mandate begins after the submission of the agreement to court, i.e. after the conclusion of negotiations. That is not the case for "practitioners in the field of restructuring", as envisaged in the Directive, since these practitioners are active while negotiations are pending (see Art. 2 par. 1 (12) of the Directive).

This divergence is attributed to the fact that, in Greek law, what is submitted to court is not the draft of an agreement, which will be subsequently approved by creditors, but an agreement already signed by the necessary majority of creditors ("*pre-voted plan*")[22]. The phase of negotiations is not supervised by court in any sense (it is completely confidential). Therefore, the parties might in practice agree to appoint a CRO while negotiations are pending, but this is not regulated in the law and it is also not included in the contents of the restructuring application which is submitted to court.

3.2.2 Required majority of creditors – classes of creditors

Under the GBC, achieving the consent of the required majority of creditors was easy compared to other jurisdictions, because it was only required to get the consent of at least 60% of all affected creditors irrespective of class, provided that at least 40% of secured creditors would consent to the restructuring. The requirement of Article 9 par. 4 of the Directive to treat affected parties in separate classes created a conundrum for the Greek legislator, because it threatened to render achieving the consent of the required majority more difficult than under the preexisting provisions, in view of the risk that any class of creditors could hold out for a better deal, leading to failure of the restructuring.

In order to address this issue, Article 34 par. 1 DSL provides for only two classes of creditors, one class for secured creditors and one for unsecured creditors, which includes creditors that have a general privilege, such as the state, social security organizations, employees etc.[23] Moreover, it is only required that a simple majority (i.e. more than 50%) of all creditors of each class consent to the restructuring agreement.

Article 34 par. 3-5 DSL contains provisions regarding which obligations of the debtor are taken into account in the calculation of the required majority. For this purpose, a list of creditors is compiled and attached to the restructuring agreement. Such list must be dated no more than three months prior to the date of the restructuring agreement. Creditors are included irrespective of whether they are secured or unsecured and whether their claims are due or not. Creditors from contracts containing mutual obligations (e.g., contracts for the sale of goods) are only included if they have fulfilled their obligations and the obligations of the debtor remain outstanding or if they have terminated the contract and have a right for damages. However, in case of financial leases, the claims of the lessors in relation to rents for the remainder of the contract duration are taken into account. Finally, claims subject to a condition are not taken into account.

Claims of creditors are included in the calculation if they have been logged in the books of the debtor or, in case of disputed claims, if they have been recognized in a court decision, even if such decision is not final. Consequently, a disputed claim will be included in the calculation, notwithstanding the failure of the debtor to include it in its accounting books, if there is a decision of a

[22] The opening of the proceedings by the court and the subsequent approval of the agreement has been abolished since the 2016 legislative amendments; see *Rokas/Tzakas*, Länderbericht: Griechenland, in: Münchener Kommentar zur Insolvenzordnung, 4th edition, 2021, p. 969, 971 f.

[23] This classification of creditors is expressly permitted by Article 9 par. 4 of the Directive.

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first instance court that may be subject to appeal or even if the court has held in the context of an application for preliminary measures that there is a probability of success of the claim (*fumus boni iuris*).

Article 54 par. 2 DSL allows for the possibility of cross-class cram down, in case the consent of the majority of one of the classes of creditors is not forthcoming. Specifically, in such a case the restructuring agreement can be ratified if the following conditions are met:

(a) it is approved by creditors representing more than 60% of the aggregate claims against the debtor and more than 50% of the secured claims;
(b) dissenting creditors are treated more favorably than creditors that are more junior according to the ranking that would apply in case of bankruptcy;
(c) no class of affected parties can receive more than the full amount of its claims; and
(d) in case of businesses classified as very small entities, the debtor has proposed or has accepted the restructuring agreement.

Secured creditors have three protections in case of a cross-class cram down: Firstly, as creditors of more than 50% of secured claims must approve the restructuring agreement, secured creditors can never be outvoted by unsecured ones. Effectively, cross-class cram down only operates against unsecured creditors. Secondly, both secured creditors and creditors enjoying a privilege by law (such as employees) have a degree of protection, in that they must be treated better than more junior creditors. However, this protection is not absolute, as it is possible for the senior ranking creditor to be repaid only in part, while the more junior creditor receives a smaller proportion of its claim, but more than zero. Thirdly, secured creditors have the protection afforded to them by the generally applicable provision of Art. 31 and 54 par. 3 DSL, according to which the position of non-consenting creditors does not become worse compared to what it would have been in case of bankruptcy.[24]

3.2.3 Consent of the debtor or of the debtor's shareholders' meeting

In principle a restructuring agreement requires the participation of the debtor. However, Art. 34 par. 2 DSL provides for an exception, in case the debtor is in a status of cessation of payments, in which case only the participation of the required majority of creditors is necessary. In this case, the consent of the debtor is deemed to be provided, if the debtor fails to intervene in the court proceedings against the ratification of the restructuring agreement (Article 54 par. 3 (e) DSL). An intervention of the debtor against the ratification of the restructuring agreement shall be rejected by the court, if it holds, based on the application and on the report of the external expert, that the restructuring agreement does not cause a deterioration of the legal and financial position of the debtor.[25]

The possibility to impose a restructuring agreement on the debtor against its will that was first introduced in 2016, but (insofar as the authors are aware) has not been used so far. It is based on the consideration that rescuing a business does not necessarily imply rescuing its owner.[26] The most probable scenario in which this possibility could be used, would be the transfer of the entire business of the debtor to a new company formed by the creditors.

In case the debtor is a legal entity, competent to grant such consent is the management

[24] The combined application of the second and third of the protections of secured creditors implies that it is only possible for a junior creditor to receive some portion of its claims in case the senior creditor is not satisfied in full, if it is held that the restructuring agreement leads to a higher overall recovery than bankruptcy. If, by way of illustration, it is held that in case of bankruptcy the senior creditor would receive 30% of its claim and the junior 0%, it is possible in the context of a cross-class cram down to approve a restructuring agreement that provides for 30% recovery for the senior and 10% for the junior creditor, but not a restructuring agreement that provides for 25 % recovery for the senior and 10% for the junior creditor, or 30% for the senior and 35% for the junior creditor.

[25] In case the debtor is a legal entity, this provision should be interpreted to refer to the legal and financial position of the debtor's shareholders.

[26] This consideration was specifically mentioned in the introductory report accompanying law 4013/2011 that first introduced the restructuring procedure into the previous Bankruptcy Code (see p. 9 of the report).

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body of the legal entity – in case of a company limited by shares (*société anonyme*) the board of directors (Art. 35 par. 1 DSL). The role of the shareholders' meeting is limited. In case the external expert finds that the restructuring agreement does not affect the rights of the shareholders to receive any remaining value after the repayment of creditors, no consent of the shareholders' meeting is required for the implementation of the restructuring agreement notwithstanding any provision of the articles of association of the debtor, other than if such consent is required by an express provision of company law.[27]

The reference to an express provision is intended to exclude the theory of so-called tacit authority of the shareholders' meeting, according to which the transfer of a large proportion of the assets of a company requires the approval of the shareholders. Consequently, while measures such as a debt-to-equity swap or other measures that involve a change in the share capital of the debtor require the approval of the shareholders' meeting, no such approval applies for the transfer of assets or of all or part of the business of the debtor, other than in case of listed companies, in relation to which the law on corporate governance provides for a shareholders' approval in case of transfer of assets corresponding to more than 51% of the assets of the company.[28]

No approval of the shareholders' meeting is needed even for matters that require such approval according to express provisions of company law in cases where no consent of the debtor is necessary, i.e. if the debtor is in a status of cessation of payments. Even in case where the approval of the shareholders' meeting is needed, the court may, in case the external expert finds that the residual value of shareholders is not affected, appoint a special representative to exercise the voting rights of non-consenting shareholders.

3.2.4 Substantive conditions for the ratification of the restructuring agreement

An agreement approved by the required majority of the creditors and (where applicable) by the debtor, shall be ratified provided the following conditions are met (Art. 54 par. 3 DSL):

(a) the restructuring agreement creates reasonable prospects that the business of the debtor will become viable;
(b) the position of non-consenting creditors does not become worse compared to what it would have been in case of bankruptcy;[29]
(c) the restructuring agreement must not be the result of malice and must not violate mandatory provisions of law, including competition law; and
(d) the restructuring agreement must treat equally creditors that are in the same position, unless there are serious business or social reasons justifying the unequal treatment.

Shareholders are not treated as creditors of the debtor. Consequently, the provisions stipulating that the position of creditors must not become worse than in the case of bankruptcy and that creditors must be treated equally, do not apply to shareholders in their capacity as such.[30] Shareholders are afforded some degree of protection, as the consent of the board (that is elected by shareholders) is required (unless the company is in a cessation of payments) and as the consent of the shareholders' meeting is required for dilutive actions (except if the company is in a cessation of payments). Furthermore, any decision affecting shareholders would have to

[27] Express provisions of Greek company law generally require the approval (or at least the prior authorization) by the shareholders' meeting of all actions that can lead to the dilution of shareholders, such as capital increase, issuance of convertibles bonds, warrants or stock options, merger (other than a merger with a subsidiary owned by 90% or more) or division of the company.
[28] See Art. 23 law 4706/2020.
[29] In relation to conditions (a) and (b) it is not necessary for the court to have full proof, as is normally required in civil cases, but it is sufficient to establish the likelihood that such conditions are met.
[30] Obviously, if a party is both a shareholder and a creditor, it shall be afforded the protections granted to creditors in relation to its claims against the debtor.

comply with the principle of equality of shareholders provided for in company law.[31]

3.2.5 Contents of the restructuring agreement

Article 39 DSL regulates the contents of the restructuring agreement. Most of its provisions replicate provisions that were inserted in the GBC in 2011. The law stipulates that the restructuring agreement can entail any arrangement related to the assets and the liabilities of the debtor. This general provision is supplemented with an extensive indicative list of possible arrangements. While most of these arrangements would arguably fall within the general provision, the list is very useful, because it provides guidance to the parties, it enhances legal certainty and, in some cases, it contains possible arrangements that do not fall within the scope of the general provision.

The indicative list contains measures, such as the amendment of payment terms of obligations of the debtor, the change of the interest rate, the conversion of obligations to bond loans, including convertible bond loans, the change of ranking of secured creditors[32], the conversion of debt to equity[33] and the reduction of the obligations of the debtor. The restructuring agreement can also regulate the relationship of the creditors among themselves after the restructuring, either in their capacity as creditors or in their capacity as shareholders, if they end up acquiring shares as part of the restructuring. Effectively, the restructuring agreement can contain an intercreditor and/or a shareholders' agreement (potentially providing for tag and drag along rights) that are binding for both consenting and non-consenting creditors.

The restructuring agreement may also provide for the sale of assets of the debtor or for the assignment of the management of the business of the debtor to a third party on the basis of a leasing of business agreement or other legal relationship. Of particular practical importance, having been used in some of the biggest restructurings in recent years, is the potential measure of transfer of the business of the debtor, in its entirety or in part, to a third party or to a company formed for this purpose by the creditors. Article 64 DSL facilitates such transfers providing for the possibility to transfer the assets of the debtor and potentially part of the liabilities to the recipient entity, for the automatic transfer of administrative licenses and for the transfer of outstanding contracts without the consent of the counterparty, provided that the recipient entity is able to perform the contract and the counterparty is not harmed by the transfer. It is also possible to transfer the claims of the creditors by way of a contribution in kind to a company formed for this purpose, which in turn acquires all or part of the assets of the debtor in exchange of such claims. This method leads to similar results to a debt-to-equity swap but protects creditors from undisclosed liabilities of the debtor.

Furthermore, the restructuring agreement may provide for new financing of the debtor or for the payment of additional amounts to the creditors in case the financial situation of the debtor improves. It is possible to also provide for the suspension of enforcement against the debtor (after ratification of the agreement by court), but such suspension can only be binding upon non-consenting creditors for a maximum period of three months. The reason for this restriction is that restructurings should be aimed to solve the liquidity issue of the debtor on a permanent basis, whereas the suspension of enforcement can only be a temporary solution.

Debt-to-equity swaps raise an issue for creditors who have the benefit of guarantees by third parties, credit insurances and other contracts having a similar effect, as the debt-to-equity swap extinguishes the claim and hence the guarantee. This would create an incentive to such creditors to vote against the

[31] See Art. 36 par. 2 law 4548/2018.

[32] This provision introduces the possibility of granting the equivalent of priming liens for new financing.

[33] This requires in principle the consent of the shareholders' meeting, but, as discussed above in par. 3.2.3, there are exceptions.

restructuring agreement.[34] In order to deal with this issue, Art. 39 par. 1 (xii) DSL provides that, unless the restructuring agreement provides otherwise, the creditor who becomes shareholder shall have a put option of to sell the shares to the guarantor or insurer or credit default swap counterparty for a price equal to the amount covered by the guarantee or insurance or credit default swap. This provision ensures that the creditor maintains the economic benefit of the guarantee, even though the primary obligation is extinguished through the debt-to-equity swap.

The restructuring agreement may affect conditional, or unknown obligations of the debtor, including claims from guarantees granted by the debtor. On the other hand, the restructuring agreement may not affect claims secured through financial collateral, to the extent such collateral is sufficient to satisfy the claim, without the consent of the relevant creditor or accrued rights from professional pensions.

3.2.6 Protection for new financing, interim financing and other restructuring-related transactions

Operation of business during restructuring negotiations might require interim finance. Also, new funding might be needed to support the business and the implementation of the restructuring after the ratification of the restructuring agreement. Greek law, even before the adoption of the Directive, included provisions granting both aforementioned types of finance a prioritized status. In particular, according to Art. 167 par. 2 DSL (previously: Art. 154 (a) of the GBC), in case of a subsequent bankruptcy, funding provided by creditors for the continuation of the debtor's business activities is treated preferentially. In fact, such funding enjoys a super-priority status, since it supersedes not only unsecured but even secured creditors or other general preferential creditors (such as the State, Social Security Funds, employees etc.)[35]. Further, "funding" includes not only loans and credits, but also provision of goods or services, to the extent they serve the continuation of the debtor's business activities. However, funding provided within the framework of a capital increase is excluded from priority.

Moreover, Art. 167 par. 2 DSL extends the super-priority status to interim finance granted for the aforementioned purposes within the course of restructuring negotiations. For the avoidance of doubt, the law clarifies that such funding has to be granted within a time period of six months prior to the submission of the restructuring agreement to court. Interestingly, interim finance enjoys preferential treatment, even if the court rejects the ratification of the restructuring agreement (e.g., in case ratification requirements are not met). In any case, the restructuring agreement has to mention the interim finance granted and its purpose, so that the court can assess its necessity.

The Directive provides for the preferential treatment of interim and new finance (Art. 17 par. 4), however: i) Member States are not required to adopt this provision[36], ii) the extent of the privilege is not detailed in the Directive and iii) it is not mentioned whether the court confirming the plan also approves the priority status of such funding. On the other hand, according to the Directive, Member States shall ensure that interim and new finance are adequately protected, in the sense they shall not be declared void in the case of a subsequent insolvency (Art. 17 par. 1).

[34] According to the financial press, the existence of credit default swaps created perverse incentives in 2009 that prevented an out-of-court restructuring of General Motors in 2009, leading to its bankruptcy. See https://www.ft.com/content/1e2bf9ea-3e54-11de-9a6c-00144feabdc0.

[35] According to the Preamble of the Directive (Recital 68), such financing should be given priority at least over unsecured claims in subsequent insolvency procedures. Such treatment, of course, is an option and not an obligation, according to the Directive's wording.

[36] That way, interim and new finance are practically treated as if they were not crucial for a viable restructuring framework; *Lynch Fannon*, in: Paulus/Dammann (eds.), European Preventive Restructuring, 2021, Art. 17 margin number 28.

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The DSL adopts an even broader wording: Within the framework of an insolvency procedure, no transaction executed pursuant to a restructuring agreement or in the course of its implementation can be annulled (Art. 120 (e)). This includes also new finance provided to the business according to a restructuring agreement which has been ratified by court. The wording of the provision is broad enough to cover also interim finance, as long as it has been included in a restructuring agreement which has been ratified by court. Further, the provision clarifies that such transactions do not constitute a fraudulent conveyance ("*katadolieusi daniston*"). Therefore, criminal liability for fraudulent conveyance according to the Criminal Code (Art. 397) is excluded.

Furthermore, Art. 120 DSL implements the provision of the Directive relating to the protection of transactions which are reasonable and immediately necessary for the negotiation of the restructuring agreement (Art. 18). According to Art. 120 (d) DSL, such transactions, including the payment of fees for and costs of negotiating, adopting or ratifying a restructuring agreement, as well as the payment of fees for and costs of seeking professional advice closely connected with the restructuring agreement, cannot be annulled in a subsequent insolvency. While this is not explicitly mentioned in the provision, the explanatory statement of the DSL clarifies that the protection is applicable also in cases where the restructuring agreement has not been ratified by court[37]. Also, the provision does not mention the point in time prior to the ratification of the restructuring agreement, from which fees and costs of negotiating benefit from protection against avoidance actions[38]. Therefore, general principles of law will apply, that is to say a reasonable negotiations' period will be presumed (e.g., 6 months, as is the case in interim finance).

Moreover, ordinary transactions within the debtor's professional or business activities, including payment of employees' wages, cannot be annulled (Art. 120 (a) DSL). Therefore, all types of transactions mentioned in Art. 18 par. 4 of the Directive are covered by the provision of the DSL. Finally, the provision of the Directive relating to transactions necessary to implement the restructuring plan (Art. 18 par. 5) is already covered by the general exception mentioned above (Art. 120 (e) DSL).

3.2.7 Directors' duties

While no distinct provision has been included in the DSL or elsewhere implementing Art. 19 of the Directive, a set of provisions address directly or indirectly the matter[39]. To begin with, according to the prevailing view, the directors' duty of care includes their duty to assess symptoms of financial difficulty of the company affecting its solvency and also to take steps to tackle such difficulties[40]. Of course, when deciding about these steps, directors enjoy the protection of the business judgment rule (Art. 102 law 4548/2018), i.e., they are insulated from liability if the rule's conditions are met. There is also support for the position that when the company approaches insolvency, directors should consider the interests of creditors, since the latter are now bearing the risks of mismanagement.[41] Therefore, the underlying principles of Art. 19 (a) and (b) of the Directive are already embodied in Greek corporate law.

Furthermore, Art. 127 DSL introduces two incidents of liability, which touch upon the issue of directors' liability: firstly, a company's board must promptly file a petition for the declaration of insolvency so as to minimize

[37] Contrary interpretation of the provision cannot be excluded.
[38] With regard to that matter see the remarks included in the Preamble of the Directive (Recital 69).
[39] With regard to the various legal instruments, Member States can employ to implement Art. 19 see *A. Rokas*, Article 19 of the Restructuring Directive and its implementation in German and in Greek Law (forthcoming 2022).
[40] See indicatively *Mikroulea*, Scope of Directors' Duties and Liability, 2013, p. 157 ff. (in Greek).
[41] See *Perakis*, Insolvency Law, 4th ed., pp. 400 ff.; *Mikroulea*, Scope of Directors' Duties and Liability, pp. 213 ff., 391 ff.; *Psaroudakis*, Shareholders in restructuring proceedings, 2020, pp. 53 ff. (in Greek).

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further detriment to creditors as well as to new counterparties. In particular, the triggering event for the compulsory filing is the cessation of payments by the debtor. Upon the occurrence of cessation of payments, the debtor's board is required to file for insolvency within 30 calendar days. However, delays due to an attempt to secure a restructuring agreement may be excused; according to the provision, the delay has to further the interests of creditors, shareholders or other stakeholders. No doubt, the wording of the latter provision has been influenced by Art. 19 (a) of the Directive and its main goal is to push directors to take into account the interests of these parties when the company is facing financial difficulties.

Secondly, members of the debtor's board of directors may also be liable to creditors if the cessation of payments has been caused due to their gross negligence or intent. Even in cases where insolvency has not been declared, the directors (including shadow directors) might be held liable if the debtor reaches the point of cessation of payments.[42] Therefore, the provision's goal is to protect creditors from reckless management leading to the insolvency of the company. Because of this provision, directors are obliged to take into account creditors' interests when insolvency is imminent, to avoid liability[43]. All in all, it is fair to conclude that this provision, while its previous version under the GBC[44] was not particularly applied in practice, serves the purpose of Art. 19 (c) of the Directive.

3.2.8 Stay of individual enforcement actions

The provisions for the stay of individual enforcement actions, as they are set down in the Articles 6 and 7 of the Directive, are detailed in the Articles 50 - 53 DSL. In the Article 50 which is titled "Ipso jure suspension – preliminary measures" are set the provisions for the stay of individual enforcement actions for the period beginning from the submission of the restructuring agreement to the Court until the latter decides either to approve or disapprove the agreement. For this time period are suspended: a) all individual enforcement actions against the debtor for all claims that are born until the issuance of the Court decision, b) any kind of restraining order against the debtor unless the order aims to stop the removal of equipment of the debtor's business, which augment its value, c) any sale of property and business equipment except if they benefit the restructuring agreement, d) all the deadlines regarding the claims of the creditors and the relevant legal actions of any type against the debtor and his guarantors and e) the offset of claims as well as the withholding of debts to the debtor that were born before the submission of the agreement.

The suspension cannot exceed the period of four months, that can be applied only once per debtor but it can be extended under special circumstances as they are laid down in Article 86 DSL and only by decision of the Court. The Court can also forbid the termination of essential executory contracts until the issuance of the Court decision about the approval or disapproval of the agreement. Moreover, according to Article 51 DSL, the Court can appoint a special trustee with authority to exercise some or all of the debtor's business decisions, especially when the Court estimates that the debtor will not run its business in a lawful way until the issuance of the Court decision. The special trustee is selected from the Registry of Insolvency Administrators (Article 227 DSL) as a measure to increase the efficiency of procedures as set down in Articles 25 – 28 of the Directive.

There are also provisions in Art. 52 DSL for a lift or modifications of the stay, which cannot exceed the twelve months period, and also

[42] Each of the creditors can bring actions against directors; see *Perakis*, Insolvency Law, 4th ed., p. 428 f.

[43] See *N. Rokas*, Besonderheiten des griechischen Gesellschaftsinsolvenzrechts, in: Paulus (ed.), Restrukturierung in Krisenzeiten, 2014, p. 76-7.
[44] Article 98 GBC.

provisions for a stay, prior to the submission of the restructuring agreement, for a maximum period of four months, if at least 20 percent of the creditors who are involved in the negotiations for the agreement, agree to it, with a possibility of extension up to six months if significant progress for the restructuring has been made and none of the parties are harmed by it.

3.2.9 Ratification by the judicial or administrative authority – Effects of restructuring agreements – Appeals

According to Article 33 DSL, the competent court for the ratification of the restructuring agreement is the (three-membered) Court of First Instance, in the area where the debtor has the center of his or her main economic interests, judging with non-contentious proceedings which are far more expeditious and efficient (Art. 25b of the Directive) than the contentious ones. The DSL provides that a restructuring agreement should enter into effect only after it has been ratified by the Court (Art. 41 DSL and 14 par. 3b of the Directive) unless all parties agree that all or part of its terms enter into effect without a court decision. Among the essential documents for the approval of the agreement is a report by a financial expert which is a member of the Experts' Registry (Art. 65 DSL). In his or her report he or she must state an opinion regarding the requirements for the ratification of the restructuring agreement and, also, verify the accuracy and validity of the creditors' list, with a special mention of the preferential creditors, and the list of all the debtor's assets.

Against the decision that ratifies the restructuring agreement, an appeal can be brought by a third party who wasn't legally present at the hearing, if that party wasn't properly summoned. In that case the court nullifies its decision only if it's not possible to maintain it by recalculating the sum of money that should be awarded to the third party. Also, an appeal can be brought against the decision that rejected the agreement by all interested parties. Furthermore, according to Article 59 DSL, the ratified restructuring agreement can be modified by the court, only once, by subsequent agreement of all the affected parties. The court ratifies the modified agreement only if: a) the modification refers to the time and the way the debts are paid, b) the modified agreement does not undermine the best interest of creditors, c) a complementary report is submitted by the financial expert with his opinion about the changes to the agreement.

The effects of the ratification of the restructuring agreement are detailed in Articles 60 – 62 DSL. The agreement is binding on all the creditors, whose claims are regulated by it, even if they are not parties to the restructuring agreement. Only claims that are born until the issuance of the decision are regulated, even if those claims become due in the future or are unknown at the time of the submission of the restructuring agreement to the Court. The decision of the court that ratifies the restructuring agreement constitutes an enforceable title for the obligations arising from it, if the quality and quantity of the claims are specified. Finally, there is a provision for the annulment of the restructuring agreement by decision of the court (Article 63 DSL) if, after the ratification, it is revealed that the deal was based on deceitful intention of the debtor alone or in collusion with a creditor or a third party, especially if that resulted in diminishing the assets or augmenting the liabilities of the debtor's business. In that case the agreement is annulled only if the monetary losses that any party suffered cannot be restored by compensation from the responsible parties.

4. The Revamped Formal Insolvency Proceedings

One of the major targets of the DSL is to simplify and streamline the formal insolvency proceedings in order to maximise their efficiency.

4.1 The Structure of the new insolvency proceeding – small bankruptcies

Under the DSL there are two kinds of insolvency proceeding, large and small. Small insolvencies are designed for small and micro enterprises and for consumers (although there may be consumers with assets of significant value that may follow the larger bankruptcy path).[45] Small insolvencies are the responsibility of the magistrate's court, until now responsible for applications relating to debt relief for overindebted households, a proceeding that has generated substantial controversy and has finally been superseded by the DSL. Petitions for small bankruptcies are filed electronically and if unopposed are granted automatically after 30 days.[46] Upon the appointment of the bankruptcy administrator, and the taking of inventory of the available assets, the process immediately turns to the piecemeal liquidation of all such assets via e-auctions. The introduction of the expedited procedure for small bankruptcies may be expected to facilitate both distressed small businesses and over-indebted consumers to obtain relief form their debts and take advantage of the debt discharge offered by the statute. As such, the new procedure is in line with Article 1 par. 4 of the Directive which recommended that "Member States may extend the application of the procedures referred to in point (b) of paragraph 1 (procedures leading to a discharge of debt incurred by insolvent entrepreneurs)."

4.2 Larger bankruptcies

Larger bankruptcies have also been streamlined. One of the major structural changes is that the decision on the bankruptcy petition also determines whether there will be a piecemeal liquidation of the debtor's estate or a sale of one or more businesses within that estate as a going concern.[47]

Both types of liquidation are done via an electronic auction process generally applied in Greece for enforcement of creditors' claims.[48] Also in both cases, the liquidation takes place immediately after the completion of the taking of inventory stage.[49] In the sale of the business, there is no minimum price, but the offer of the highest bidder is subject to the consent of the creditors' assembly.[50] In the piecemeal liquidation sale, assets are sold in lots of a minimum value of EURO 50,000 and the administrator is responsible to set the minimum price as the mean of the estimates of two certified valuators.[51] If there are no qualifying bids then the minimum price is subject to automatic adjustments, without court intervention, and given the time intervals provided in the statute, the whole process is likely to be completed within less than a year, much faster than the practice until now.

For an application for a going concern sale to be considered, it must be supported by at least 30% of creditors (in terms of the value of their respective claims, as reflected in the books of the debtor) and by at least 20% of secured creditors. Creditors who are related parties to the debtor are not counted.[52]

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[45] The distinction between large and small bankruptcies based on the value of the debtor's assets (as well as its turnover and number of employees) may seem to closely track the recommendations made by Jason Kilburn in a recent article: "It may well be sensible to differentiate not between business and consumer cases, but between high-value and low-value cases; that is, cases in which the debtor has assets and/or income of significant value, sufficient to attract meaningful attention from creditors." Kilborn, Jason J., The Personal Side of Harmonizing European Insolvency Law (August 1, 2016), available at https://ssrn.com/abstract=2816618 or http://dx.doi.org/10.2139/ssrn.2816618, *p. 26.*

[46] Art. 173 par. 1 DSL.

[47] Art. 81 and 158 ff. DSL.

[48] The compulsory use of the e-auction platform was introduced by law 4512/2018.

[49] Art. 157 DSL.

[50] Art. 158-159 DSL.

[51] Art. 162 par. 4 DSL.

[52] Art. 79 par. 1 DSL.

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It should also be noted that, procedurally, the going-concern sale adopts the same procedure (substantially) as that of the special administration, a proceeding introduced by a special law in 2014[53] as a replacement for a proceeding introduced in 2011, styled "special liquidation" that was found to be very cumbersome and inefficient. Special administration was applied successfully in a number of cases and has been considered a relative success, due to its simplicity, creditor control and minimum court intervention.

4.3 Focus on efficiency of procedures

One of the main objectives of the Directive is to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt. It is clear throughout the DSL, that the Greek legislator intented to ensure such improvements to the insolvency proceeding. A first measure was to cut down all the legal deadlines to the minimum. Interested parties have very limited opportunities to interfere in the process. For instance, the debtor is called at the hearing of the insolvency proceedings at least 15 days prior to it. Any appeal against the decision of the court that declared the insolvency should be lodged within 30 days from the day of the decision while the possibility of appealing against the court decision is limited to specific cases (Article 131 DSL). Also, the insolvency cases are tried with non-contentious proceedings which follow very simplified procedural rules and can lead to swift disposition of the cases.

The DSL also introduced other changes to the insolvency proceedings Article 84 of the previous GBC, according to which the rapporteur was obliged to convene the meeting of creditors, after the ending of the verification of claims, has been repealed. Article 95 of the previous GBC, which regulated the objections made by the debtor, the syndic and the creditors against the procedure of the verification of claims, has also been repealed. The time-consuming procedure of setting a lower first bid price for the sale of individual assets of the debtor, as it was regulated in Article 150 of the GBC has been replaced by Article 164 DSL; according to the new provision, in the minimum price is automatically reduced if an auction fails to generate a qualifying bid. Articles 152 and 161 of the GBC provided for separate procedures for oppositions against the enforcement proceedings and oppositions against the list of distribution. These two different proceedings which could be brought in different occasions, thus delaying the procedures, are now "merged" in Article 168 DSL in a single procedure of oppositions against the creditors' classification table. Finally, another notable change is the simplified procedure of distributions to creditors in Article 167 DSL.

5. Insolvency Judges and Practitioners

Another aim of the Directive is to ensure there is suitable training which leads to expertise of the judicial authorities who deal with the abovementioned procedures. To that end, Article 132 DSL provides that the judiciary reporter is selected from judges with previous experience of insolvency proceedings and special training in that area.

The structure for the organization and supervision of the insolvency profession under the DSL tracks the main requirements of the Directive.[54] Appointment as administrator or special trustee in a restructuring proceeding (in cases where such an appointment is sought and granted) requires prior registration based on qualifications including a successful examination of the practitioners engaged on subjects set by a committee appointed by the Minister of Finance for that purpose.[55] Qualified individuals and practitioners are supervised by another committee also appointed by the Minister of Finance,[56] while

[53] Law 4307/2014.
[54] See Recitals 87 through to 90 and Art. 26 and 27.
[55] Art. 228, 232 DSL.
[56] Art. 229 DSL.

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the DSL also provides for a disciplinary process that can lead to deregistration as well as disciplinary, administrative or criminal sanctions.

To strengthen the resources available to the insolvency tasks, the DSL provides that both legal and natural persons can be registered as insolvency professionals and receive relevant appointments. Legal persons that can seek such registration must engage practitioners who have passed the relevant examinations and can be law firms, audit firms or consulting firms.[57] Appointment also requires that the professionals have professional insurance.[58] Registration must be renewed every four years and in addition to the interested party's conduct and disciplinary record,[59] the applicant must show that it has satisfied continuing education requirements.[60]

Courts are instructed to give special consideration to the preference of creditors in the appointment of administrators, indeed to heed the proposal of the largest creditor except where there is cause to exclude them, such as conflict of interest.[61] The DSL provides for the establishment of an electronic registry of insolvency professionals that includes information on prior appointments, as well as their disciplinary record, in order to facilitate selection of professionals with the requisite experience for each particular case.[62] Creditors, operating via their assembly, also have the right to seek the replacement of an administrator.[63]

6. Use of electronic means of communication

As an additional means to improve efficiency, the Directive requires Member States to put in place provisions enabling debtors, creditors, practitioners and judicial and administrative authorities to use electronic means of communication, for steps such as the filing of claims by creditors, the notification of creditors, or the lodging of challenges and appeals, can be carried out by electronic means of communication.[64] The DSL makes extensive use of electronic and digital means, among other things, for the purposes of communication, to formulate proposals for use in the OCW, to file petitions and lodge creditor claims, to vote on a restructuring agreement.

Article 212 DSL provides that, in accordance with Article 28 of the Directive, the procedures of DSL are aided by electronic means of communication and data transfer. These electronic means are: a) the Electronic Registry of Insolvency, b) the Electronic Platform of Extra Judicial Settlement of Article 29 DSL and c) the System of Management of Judicial Affairs of Civil and Criminal Justice.

The Electronic Registry of Insolvency facilitates taking the following actions, including cross-border actions, through electronic means of communication: a) filing of claims, b) submission of restructuring or repayment agreements, c) electronic voting according, for instance, to Article 34 par. 1 DSL which provides that the consent of the creditors in a restructuring deal can be given through electronic voting, d) notifications to creditors, as for instance, in Article 49 par. 3 DSL it is provided that with care of the applicant, the application for the restructuring should be forwarded through e-mail to the concerned creditors, the stock holders or partners of the debtor, within 20 days from the publication of the application and not later than 2 days before the hearing in the court, e) lodging of challenges and appeals, f) publication of court decisions and provisions relating to the procedures of this law and g) recording the information that are provided in the law. All the information on the Electronic Registry of Insolvency is publicly available.

[57] Art. 230 DSL.
[58] Art. 236 par. 7 DSL.
[59] Art. 231 DSL.
[60] Art. 235 DSL.
[61] Art. 137 DSL.
[62] Art. 234 DSL.
[63] Art. 138 par. 2 DSL.
[64] Directive Art. 28.

The Electronic Platform of Extra Judicial Settlement, the Electronic Registry of Insolvency and the System of Management of Judicial Affairs of Civil and Criminal Justice interface and exchange information with databases of the public sector or the financial institutions, as well as with every other electronic system of the public sector from which data is demanded.

7. Debt discharge

One of the main goals of the Directive is to align the various discharge rules and periods within the Union.[65] Accordingly, Member States are required to ensure that entrepreneurs have a path to a full discharge of debts[66]. Such discharge should be available within a three year period without the need to apply to a judicial or administrative authority for a decision that provides such discharge (but a process of verification of the conditions of discharge is allowed).[67] The Directive provides for permitted derogations from the discharge or for an extension of the relevant time in certain circumstances.[68] The Greek legislator also noted the strong recommendation in the Recitals to the Directive that "*Member States … apply also to consumers, at the earliest opportunity, the provisions of this Directive concerning discharge of debt*."[69]

The DSL provides that individuals that are declared bankrupt or the petition for the bankruptcy whereof is rejected due to insufficiency of funds to cover the costs of the procedure, are discharged of substantially all their debts on the third anniversary of the issuance of the respective court decision (either declaring them bankrupt or filing the petition due to insufficiency of available funds), unless an interested party files an objection to such discharge.[70] Discharge can be avoided where the cessation of payments is due to the debtor's intent or where the debtor failed to show good faith whether at the time of the declaration of bankruptcy or thereafter. Similarly, discharge may be avoided where the debtor failed to disclose his or her assets and more generally to be cooperative with the bankruptcy organs or if convicted or has been charged with crimes related to insolvency or for theft, fraud, forgery or defrauding of creditors. Moreover, debts created after the filing of the bankruptcy petition, or arising from bodily injury or death due to intent or gross negligence, money laundering or family maintenance are also excluded from discharge.[71]

The DSL also includes a liability discharge provision for executives, covering their liability for public debts of the insolvent debtor incurred at any time during the suspect period[72] as well as 36 months before it.[73] This discharge is available only in the event of the corporate debtor's insolvency and for executives who have acted in good faith, are not liable for bankruptcy related crimes or for fraud, theft or forgery, and who have cooperated fully with the bankruptcy organs.[74] The new provision allows for extensive efforts to avoid insolvency and to pursue negotiations with creditors and potential investors, while at the same time creating strong incentives for openness and transparency in the conduct of the executives and their collaboration in the bankruptcy process.

It is therefore apparent that the DSL introduces a broadly cast debt discharge that produces its effects without the intervention of a court, simply by the passage of time, except

[65] European Preventive Restructuring, p. 2 (Paulus).
[66] Directive Art. 20.
[67] Directive Art. 21.
[68] Directive Art. 23.
[69] Directive Recital 21.
[70] Art. 192 DSL.
[71] Art. 192-194 DSL.
[72] The "suspect period" is the time period between the date of cessation of payments of the debtor and the date of declaration of bankruptcy or its rejection for reasons of lack of sufficient assets to cover the related costs. According to article 81 par. 2 DSL, where the debtor is in cessation of payments at the time of filing, there is a presumption that it occurred 30 days prior to such filing but if rebutted the date can be set as far back as two years from the date the court issues its decision on the bankruptcy petition.
[73] Art. 195 par. 1 DSL.
[74] Art. 195 par. 2 DSL.

in the cases challenged on one or more of the specific bases provided in the same statute.

8. Conclusion

The DSL attempts to provide all parties exposed to the risk of insolvency with the means to avoid it or be set free from its effects. It emphasizes speed and efficiency as well as publicity and transparency. It represents a radical departure from past processes and practices. It remains to be seen whether it will be rigorous enough to address the accumulated private sector solvency problems caused by the Greek sovereign debt crisis as well as the more recent economic crisis engendered by the COVID-19 pandemic.