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Greece

Some Aspects of Transborder Bankruptcy

By Gregory M. Pelecanos

The essential provisions of Greek Bankruptcy Law date back to 1878 and 1910 and only secondary amendments to these laws have been enacted in more recent times. It is obvious that outdated laws cannot, and do not provide satisfactory solutions to modern business problems. Certainly such old laws could not foresee, nor did they provide rules to deal with problems in a transnational business community.

Despite the many attempts to modernize bankruptcy law, no headway has been achieved to date. This is not particularly surprising given that even in the common market, early attempts to harmonize bankruptcy laws of the member-states have been

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Iceland

New Legislation on Bankruptcy

By Vidar Mar Mattiasson

On July 1, 1992, new legislation on legal procedures involving bankruptcy will enter into effect in Iceland. This will bring about fundamental changes in all fields of legal procedure, and also a separation between all administrative duties and the functions of the courts. The first group of changes is in respect to separation of district judicial and administrative powers. A portion of the changes is effected by the enactment of a new Bankruptcy Act, no. 21/1991, which also enters into effect July 1, 1992. The new Bankruptcy Act takes the place of the previous Bankruptcy Act of 1978, and the Act on Composition, which dates from 1924.

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Sweden

Is the Debtor Sanctioned to Conceal Money Abroad?

By Acko Schager

Swedish bankruptcy practice is primarily controlled by the Bankruptcy Act 1987:672 which came into effect on January 1, 1988. The new bankruptcy law marks the end of a long period of exhaustive work reforming the previous bankruptcy law of 1921. Legislators have not, however, been successful in removing all the weaknesses which exist in the legal system. The number of insolvency cases with complicated international operations is increasing as business becomes more and more global. The present legal position cannot be said to be satisfactory either in Sweden or abroad. The shrewd bankrupt and creditor can, at the time of a bankruptcy, often take advantage of these

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thwarted in view of the many substantial differences in the legal systems of the member-states.

On the question of transborder effects of bankruptcies, commentators have supported two main views. The first, called the system of unity or internationality, would have a bankruptcy extend to the debtor's total property wherever that may be situated. The second view, called the system of territorially or multiplicity would hold that the effects of a bankruptcy do not extend beyond the jurisdiction of the State where bankruptcy was declared.

The Question of Applicable Law

Greece does not have a special code on private law of international commerce (conflict of laws), to which one could turn to find an answer to which view is more appropriate to the Greek legal system. Nor do the bankruptcy laws fail to deal with these problems as well.

The prevailing opinion however is that the system of territorially or of multiplicity would generally apply. In view of the many differences in substantive provisions of national bankruptcy laws, many of which are rules of public order, it does not seem possible to accept the system of unity or internationality of bankruptcies.

However, even if the system of territorially is adopted this does not put an end to the question of applicable law. Some legal systems provide for bankruptcy of private persons who are not merchants. The Greek system permits bankruptcy of merchants only.

Can a foreigner, who may be declared bankrupt in his own country, be also declared bankrupt in Greece, even if not a merchant? Greek Law, "Lex Fori", would suggest that the foreigner cannot be declared bankrupt in Greece because the role of merchant is a public order requirement. Foreigners in Greece are by law entitled to all the civil law rights applicable to Greek citizens.

In view of internationalization of trade, one can only hope that pressure will be exerted on all policy makers to harmonize bankruptcy laws.

Therefore, to be declared bankrupt in Greece, that person should be a merchant. The characterization of a person as a merchant will also be decided by Greek Law. The location where the trading activity took place, is of no importance, whether in Greece or abroad.

The Greek courts will declare a person bankrupt who is considered a merchant abroad, even if no trading activities occurred in Greece. Of course the effect of the bankruptcy would be limited to assets & liabilities in Greece, unless the foreign law provides otherwise.

Conversely, by applying the principle of territorially, a debtor's assets in Greece will not be effected by a declaration of

bankruptcy in his home State. A separate, Greek Court decision declaring bankruptcy would be necessary and the debtor's status as merchant would have to be established.

Further questions may arise relating to a further condition imposed by Greek law. A merchant may be declared bankrupt if a court establishes permanent stay of payments. The merchant may be a foreigner whose national law sets other requirements. Which will the Greek Court apply? Again, the Greek Court would apply the Lex Fori and declare bankruptcy only if permanent stay of payments is established.

Consequently, foreign companies registered abroad could be declared bankrupt in Greece. If a foreign company, whose registered seat is abroad, is declared bankrupt by Greek Courts, a question may arise relating to whether that company may continue operations in Greece.

However, since bankruptcy produces results only within the Greek territory it involves, only the assets & liabilities in Greece are affected, not the legal standing of the company. Such extra-territorial effects would be unacceptable and consequently, although its assets in Greece would form the bankrupt estate, the company would not be prevented from conducting other business in Greece.

The Validation of Debts

Another issue related to international bankruptcies under Greek law refers to the validation of debts incurred towards foreign creditors. Which law governs these debts? The proper answer in our opinion is that the applicable law is the law which regulates the relationship which gave cause to the claim.

The applicable law may well be a foreign law since, Article 25 of the Civil Code provides that contractual obligations are governed by the law to which the parties submitted and that in the absence of such a law, the Courts are to apply to the contract the most appropriate law taking into account all the particular circumstances.

Claims based on negotiable instruments will be governed by the law stipulated by the 1930 Geneva Convention on bill of exchange. This may cause inconvenience to the Greek Courts when examining the validity of debts prior to declaring a bankruptcy (during the process of assessing stay of payments) and after the bankruptcy is declared with reference to the recovery of debts to foreign creditors from the bankrupt estate.

The appropriate rule is that all foreign debts should be validated by applying the law that governs the relationship which gave cause to their existence. The objective behind the rule is to protect the creditors, not the debtor.

Conclusion

As in most countries, Greek bankruptcy law is very detailed and has developed many unique rules. In view of internationalization of trade, one can only hope that pressure will be exerted on all policy makers to harmonize bankruptcy laws.

Bankruptcy is no less important than other areas of the law where common rules are being developed. Of course conflicting interests deter any speedy convergence. One however could readily argue that efficient reallocation of resources is as necessary as their efficient allocation. •