

UNCITRAL Model Law on Cross-Border Insolvency: No recognition for a US reorganization order in Greece

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By virtue of Law Nr. 3858/2010, Greece has adapted its legislation to the UNCITRAL Model Law on Cross-Border Insolvency. The appearance of the law in practice is scarce; so is the case with respect to legal scholarship. A recent judgment by the Chamber of the Piraeus 1st Instance court [date of publication: 15/12/2020] demonstrates the pitfalls in the field of recognition.

THE FACTS

The applicant is a foreign company registered in the USA. It requested the recognition of an order issued by the United States Bankruptcy Court for the Southern District of New York. The order was issued in accordance with Chapter 11 of the United States Bankruptcy Code, following a motion for entry of an order authorising rejection of certain unexpired leases and granting related relief. The motion was submitted by the applicant and a number of subsidiary companies. The applicant clarified that it acts as a trustee of the business, in his capacity as debtor in possession. There's no direct reference in the judgment's text, but I presume that the applicable provision must have been § 1107, 11 U.S. Code [Rights, powers, and duties of debtor in possession].

THE RULING

The Greek court confirmed its jurisdiction by a simple reference to the Law 3858/2010 and domestic procedural rules. Despite the lack of reasoning, the court was indeed competent: all subsidiary companies were apparently registered in Greece. In addition, the applicant had presumably assets in the jurisdiction.

Moving ahead however, the court dismissed the request as inadmissible, referring to Articles 9 and 15(1) of the Law (same numbering with the Model Law). In

particular, the court considered that the application was not filed by a foreign representative for the purposes of Article 15(1). The applicant failed to furnish the documents provided for in Article 15(2), or any other documents which would prove the above. The sole documents submitted were the US order and its notification (does not explain to whom); the latter do not suffice for proving the capacity of the applicant to act as a trustee in bankruptcy (= foreign representative).

In addition, the request was also unfounded and contrary to Greek public policy. In accordance with Greek perceptions, it is not admissible to request jointly recognition for the entire *group of companies* (as the court notes). Hence, the request contravenes Article 6, and is to be dismissed.

SHORT NOTE

The judgment of the court proves that the subject matter needs extensive elaboration in Greece. First, a sheer reference to the US statutes would have convinced the Greek court to overcome the first hurdle. § 1107, 11 U.S. Code reads as follows: *(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.*

Second, the dismissal of the request by clinging to public policy is a recipe often followed when a court is faced with a different approach compared to domestic legislation. Unfortunately, the exceptional nature of the provision (see Article 6: *...if the action would be manifestly contrary to the public policy of this State*) did not convince the court to delve into the matter, and discover some useful material tackling with the issue in question [see the UNCITRAL Legislative Guide on Insolvency Law - Part three: Treatment of enterprise groups in insolvency, p. 88: *Although the Model Law has limited application in the enterprise group context, it is desirable that the access to courts and recognition of foreign proceedings it provides with respect to individual debtors also be provided with respect to insolvency proceedings involving members of the same enterprise group*].