# Inside Story: Greece

This month's Inside Story is brought to you by Stathis Potamitis (stathis.potamitis@potamitisvekris.com), Managing Partner of POTAMITISVEKRIS, www.potatmitisvekris.com, Athens, Greece.

The Greek insolvency system is currently at an impasse. As a result, a very substantial number of productive assets are in a state of captivity and inactivity. This greatly hampers growth prospects and the creation of new jobs, both essential requirements given the current crisis conditions.

The causes of this serious problem are many and complex: they relate to the prevailing economic conditions, the state of the financial institutions, the laws, the courts and the professionals. I will touch very briefly on each of them in turn:

**The economic conditions:** Greece is currently a market with very limited liquidity. This means that there is scant opportunity to sell businesses or assets. Therefore, one of the main methods for restoring assets to productive uses is unavailable.

**The state of financial institutions:** Greek banks have very limited access to funds but large and increasing capital needs. In practice, banks find it extremely difficult to reach restructuring deals that lead to viable outcomes.

**The laws:** The quality of Greek legislation is generally poor. There are two general problems with our insolvency laws:

**First,** the position of creditors who enjoy statutory priority has been strengthened in recent years. Currently, the proceeds of any forced sale go first to satisfy VAT, employee and pension fund claims, substantially in full. The balance goes up to 1/3 to satisfy other tax claims before secured creditors get their (usually small) share. This significant imbalance creates perverse incentives in restructurings. Employees usually take the view that they are better off resisting any compromise of their claims. Moreover, a viable plan will require excessive sacrifices from secured and unsecured creditors. Other laws, including labour laws and laws imposing criminal and civil liability on managers, make restructurings both challenging and risky.

**Second,** insolvency and recovery proceedings betray a stunning lack of purpose combined with excessive formalism: Bankruptcy is so complex and involves so many players (many of whom lack valuable claims) that it ends up as a black hole - whatever goes in it nearly never comes out. The procedural complexity of pre-insolvency proceedings entails tremendous delays. Procedural protections are easily abused by holdouts thereby frustrating the statutory goal of encouraging pre-

insolvency turnarounds.

**The courts:** Restructuring and insolvency proceedings impose severe burdens on courts of general jurisdiction. For example, the opening of a restructuring process requires the court to assess the viability of the debtor in the absence of even an outline of a possible restructuring agreement. There are many similar impossible tasks placed upon inexpert judges who, naturally, treat the whole process with suspicion and circumspection leading to frequent postponements and unpredictable decisions. Generalist judges reasonably focus on matters or procedure or social sensitivity (employee and state objections are frequently given disproportionate weight by courts). Courts are also understaffed, disgruntled and overloaded with work. This impacts both the quality and speed of decisions.

**Professionals:** Insolvency administrators are chosen randomly from a list of lawyers whose only formal qualification is that they have been in practice for at least five years without any regard to insolvency experience or credentials. In the absence of specialised courts, there is no honest broker to advance the process of restoring the debtor's assets to productive uses - resulting in tremendous dissipation of value, lack of transparency and corruption.

All in all, a witches' brew. Which way out of the cauldron?

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