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COMMUNITY OF PRACTICE QUESTIONNAIRE ON INSOLVENCY LAW AND COMPANY LAW

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This questionnaire addresses the issues affecting the interface between insolvency law and company law, and should be answered providing a) references to the statutes and provisions quoted; b) relevant cases, if any; c) any other supporting information, such as references to books or articles.

As an introduction to the questionnaire, consider the following examples of interaction and conflicts between insolvency law and company law (the examples, that assume certain characteristics of some legal systems, should be understood as having only illustrative purposes):

1) A company is under a reorganization procedure. Its directors have prepared a reorganization plan that, inter alia, provides for the conversion of creditors’ claims into equity of the company. In more detail, the plan would provide for the cancellation of the existing shares and the issuance of new shares to be allotted exclusively to the company’s creditors, except if the shareholders make a new contribution into the company. The plan also provides for the transfer of a substantial part of the business to a third party. The shareholders oppose the plan. However, the creditors and the board, with the support of a due diligence analysis, have reason to believe that the opposition is unreasonable, as the value of the company’s liabilities clearly exceeds the value of the assets, and in a liquidation the shareholders would not receive any proceeds.

2) In a company under a reorganization procedure, the plan foresees the issuance of new shares to be allotted to the company’s creditors, diluting the existing shares but without cancelling them. The new shares would have prevailing voting and governance rights over the existing shares. The shareholders oppose the plan.

3) A reorganization plan foresees, inter alia, a capital increase structured in such a way to ensure that a substantial share in the company would be acquired by an external investor, whose resources/business strategies would help save the long-term operation of the company. However, the shareholders opposing the plan decide to exercise their pre-emption rights in the capital increase, thereby defeating the plan’s strategy based on the stepping-in of the significant investor.

4) A company is under a reorganization procedure and the board of directors is designing a plan that, while ensuring the viability of the business, would adversely affect the rights of the shareholders. A minority shareholder requests that a general meeting of the company be held, seeking the approval of several proposals by the meeting, including the removal of the directors of the company in reorganization.

5) A reorganization plan is approved with the decisive support of intra-group (insider) creditors, with the result that unsecured creditors suffer a loss, whereas shareholders retain value in the reorganized company.
These stylized examples, drawn from a number of real cases in different jurisdictions around the world, illustrate the tension between the shareholders, the creditors and, in general, company law and insolvency law.

The purpose of the following questionnaire is to identify how shareholder rights are affected by the insolvency of the company (including in cases of imminent insolvency), and the interaction between shareholder rights and the normal operations in an insolvency process (either a liquidation or a reorganization process). Although some general questions are also relevant for insolvency procedures applicable to special regulated companies (i.e., for example, financial institutions), the questionnaire is designed to analyse the conflicts between insolvency law and company law, and therefore, reference should be made to the ordinary insolvency procedures as applied to the corporate forms which are generally used in your jurisdiction for both “close” and “open” companies.

The main issues can be summarized as follows:

- The respective powers of the board and the shareholders’ meeting in insolvency proceedings;

- The substantive and procedural rights of shareholders in a company subject to insolvency proceedings;

- The possibility of using the old/same corporate entity as a vehicle for the reorganization of the company;

- The possibility of the shareholders to retain a participation in the reorganized company, and, if they are allowed to retain a participation, the allocation of value between creditors and shareholders.

All of these issues are structured around two principal areas of conflict between company law and insolvency law: the individual rights of shareholders and the role of the shareholders’ meeting in an insolvent company.

Dealing with the preceding issues implies, inter alia, addressing the question of the legal position of the shareholders in companies, e.g. the question of whether and to what extent the law considers shareholders as owners of the company in a legal sense. The effects on the legal position of shareholders of an insolvent company may in fact create a conflict with special -even constitutional- safeguards for the protection of property rights. These safeguards, in turn, may be less or more stringent, depending on whether the company is insolvent in the balance-sheet sense (i.e., whether the value of its liabilities exceeds the value of its assets) or not, and whether a liquidation or a reorganization procedure is used.

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1 For instance, the questionnaire for the UK will include references to both limited liability companies (LLCs) and public limited companies (PLCs); the questionnaire for Germany will cover both AGs and GmbHs; and the questionnaire for Italy will cover SPAs and SRLs.
In addition, the preceding issues may present further variables according to the characteristics of the company involved. Outcomes could be different depending on the fact that the company is closely held or is a listed company, or is a specially regulated company, such as a financial intermediary.

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I. INTRODUCTORY QUESTIONS ON THE INSOLVENCY PROCEDURES AVAILABLE IN THE RELEVANT JURISDICTION.

1. What insolvency procedures – either liquidation or reorganization procedures – are available for distressed or insolvent companies?

A1: The Greek Insolvency Code (IC) provides for both liquidation and reorganization procedures. Specifically, apart from straight forward insolvency liquidation proceedings, the IC also provides for special liquidation\(^3\), pre-insolvency rehabilitation\(^4\) as well as (intra-insolvency) reorganization proceedings\(^5\). Debtor in possession proceeding are also available under the IC\(^6\).

2. Are there special insolvency procedures available for financial institutions or for other special classes of companies?

A2: Yes, the reorganization and winding-up of credit institutions is governed by Law 3458/2006\(^7\) and Law 3601/2007 (article 62)\(^8\). Furthermore, the reorganization and winding up of insurance undertakings is regulated by Presidential Decree 333/2003\(^9\) that adopted the corresponding EC Directive 2001/17 19.03.2001. The provision of the IC will still apply to the above proceedings to the extent these are not specifically regulated\(^10\).

A special regime also exists for investment firms, applying the provisions of law 3606/2007\(^11\) (article 22), as amended by law 3757/2009.

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3 Article 106k IC.
4 Articles 99-106, Chapter 6 IC. Also note that although rehabilitation is a pre-insolvency procedure, a debtor satisfying the criteria for insolvency may still request the opening of rehabilitation proceedings, see article 99 (6) IC.
5 Articles 107-131, Chapter 7 IC.
6 See article 18 IC and A10, A12 below.
9 Amending Legislative Decree 400/70 (articles 10 and 12a).
10 Article 179, IC.
3. Are there any specific legal provisions that apply to debt restructurings achieved without a full formal insolvency process?

A3: No, informal workouts will be governed by the provisions of contract law, company law etc. and will not be binding upon non participating parties\(^\text{12}\).

4. What are the commencement criteria for insolvency procedures?

A4: There are two main conditions\(^\text{13}\) for the inception of proceedings under the IC:

a) Insolvency capacity\(^\text{14}\); and

b) Cessation of payments\(^\text{15}\).

Insolvency capacity means that only merchant debtors are eligible for insolvency. This also includes associations of persons with legal personality, which pursue an economic purpose. However, legal persons governed by public law, municipal authorities and public organizations, are excluded\(^\text{16}\).

As regards cessation of payments, a debtor who is unable to fulfill his pecuniary obligations as they become due, in a general and permanent manner (cessation of payments), is declared in insolvency. Payments that are made with fraudulent or destructive means do not constitute fulfillment of obligations\(^\text{17}\).

A threatened inability to fulfill obligations constitutes grounds for the declaration of insolvency, when the declaration is requested by the debtor\(^\text{18}\).

5. Who can propose a restructuring plan? (e.g. corporate bodies, insolvency representatives, creditors)

A5: Rehabilitation is a voluntary procedure and only the debtor can propose a rehabilitation plan\(^\text{19}\). The same also applies for special liquidation\(^\text{20}\). However, as

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\(^{12}\) Although not an informal procedure, the IC provides for a simplified procedure for small insolvencies, with an insolvency estate not exceeding €100.000, see Chapter 9 IC (articles 162-163).

\(^{13}\) See also article 6 (2) where, even for debtors satisfying the criteria for the declaration of insolvency, the application for the inception of insolvency proceedings is rejected by the Court when “the debtor’s estate will not suffice to cover the expenses of the procedure”. Also, “the insolvency court dismisses the application, if it is proven that it is exercised abusively”, see article 6 (3) IC.

\(^{14}\) Article 2 (1) IC.

\(^{15}\) Article 3 (1) IC.

\(^{16}\) Article 3 (1) IC. However, public sector “enterprises” engaging in commercial activity and private companies owned by public sector entities are not exempt from insolvency; SC 50/1996, NV 1998:210, see also Athens CA 4515/2010, which in all likelihood opens the road for municipal enterprises to be declared insolvent.

\(^{17}\) Article 3 (1) IC.

\(^{18}\) Article 3 (2) IC.

\(^{19}\) Article 99 (1) IC.

\(^{20}\) Article 106k (1) IC.
regards reorganisation proceedings, both the debtor and the Syndic can propose a plan.

6. Please describe whether and to what extent shareholders’ rights can be affected by a situation of distress/insolvency of a company before and/or irrespective of the opening of a formal insolvency proceeding (e.g., are there any fiduciary duties of the shareholders to approve corrective measures/plans proposed by the board?)

A6: The effect that corporate distress can have on shareholders’ rights, is predominantly discussed in domestic legal theory within the context of undercapitalisation. Greek legislation does not have an express provision to determine whether shareholders who have provided loans to the company, whilst such company was in distress, are satisfied together with the remaining creditors or whether they rank last. Nevertheless, there is general consensus between scholars that such shareholders’ claims should be subordinated and not treated equally to the remaining company creditors.

As regards the position of domestic law on the duties of shareholders, legal doctrine in Greece has traditionally accepted that the only duty that a shareholder has is to make the corresponding contribution in order to acquire the shares. However, the matter has been revisited in the last years by various scholars, arguing that shareholders also have a duty of loyalty.

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21 Article 108 (1) IC and A33.
22 With the exception of article 32 Law 3190/1955, which applies only to limited liability companies, leaving outside its scope companies limited by shares (sociétés anonymes). However, the said provision expressly excludes from its ambit insolvency proceedings and provides in para. 3 that “in case of dissolution of the company for any reason whatsoever except in case it is declared bankrupt, the claims of the partners from loans are satisfied following payment of the remaining debts of the company”. This means that in the case of insolvency, loans provided by partners will not be subordinated given the principle of the equal treatment of all unsecured creditors, see Levendis E, Limited Liability Companies, 1998, Sakkoulas, p., 299. However, it is suggested that even in the event of insolvency, and for undercapitalised limited liability companies where the partners have acted with the view of causing damages to creditors, paragraph 3 should not apply and partners should rank last after all other creditors, see Vervessos N, The problems of nominal undercapitalisation on limited liability companies, ComLawRev, 2003, p., 453. The possibility of an analogy application of article 32 (L 3190/1920) to companies limited by shares has been rejected by legal theorists in Greece on the basis of the differences between the position of a partner in a limited liability company (to which article 32 above applies) and a shareholder of a company limited by shares, see Tzouganatos D, The law of limited liability companies, 1994, (Perakis ed), NB (Nomiki Bibliothiki), p., 684.
24 This is justified on the grounds of article 281 Greek Civil Code and treating the shareholders request equally to other company creditors, would be considered on this basis as an abuse of right, see Vervessos N, The problems of nominal undercapitalisation on limited liability companies, ComLawRev, 2003, p., 468.
25 Shareholders’ duties should only be considered those emanating directly from the law and not any such duties resulting from contractual obligations assumed by the shareholder, see Kouarakis E, The law of sociétés anonymes, (Perakis ed), Vol., I, 2010, NB (Nomiki Bibliothiki), pp., 563-564.
This suggests that the shareholder has an obligation to take into consideration the reasonable interests of the company and that of the remaining shareholders as well as to not act against such interests\(^{27}\). According to this line of argument, if a reorganisation is vital for the interest of the company, blocking such decision or voting against same can be an unlawful act, provided that such act: (a) purported to solely serve the self-interests of that shareholder and (b) it was in breach of the principle of proportionality\(^{28}\). However, this position mostly appears in theory and has not been confirmed by domestic courts in any conclusive manner.

II. SHAREHOLDERS’ RIGHTS IN COMPANIES SUBJECT TO INSOLVENCY PROCEEDINGS

7. Are shareholders notified of the initiation of an insolvency process? If notification is individualized, what are the mechanisms used to identify shareholders?

\textbf{A7:} There is no requirement under Greek law to notify shareholders of an insolvency process (or pre-insolvency rehabilitation and special liquidation, see A1). Nevertheless, the IC contains express provisions to ensure specific publication requirements. For instance, the decision declaring the insolvency as well as other key information is entered in public books and records\(^{29}\).

Additional publication requirements exist for certain type of debtors. For instance, an excerpt of the decision declaring the insolvency of an insurance undertaking is notified to the Ministry of Development\(^{30}\). Also, the decision declaring the insolvency of a debtor participating in payment systems is served without delay to the Bank of Greece, who then immediately notifies the European Central Bank and the competent authorities\(^{31}\).

Finally, listed companies need to publish on the website of the regulated market at which they are listed, information regarding insolvency petitions, court decisions related to the insolvency as well as any other legal proceeding and court disputes which may substantially affect the financial position of the company\(^{32}\).

\(^{27}\) Spyridonos A, Minority rights in a soci\'et\'e anonyme, 2001, NB, p. 574.


\(^{29}\) Articles 8 and 9 IC. In rehabilitation, the court’s decision opening proceedings is published in the General Commercial Registry (GCR) and in the Bulletin of Judicial Publications of the Uniform Fund of Independent Employees (Lawyers Fund), see article 101 (2) IC. Same also applies to special liquidation. See also article 105 (4) IC on the publication of the invitation to creditors to vote on the rehabilitation agreement.


8. Are shareholders required to file claims in the insolvency proceeding? What are the consequences of not filing a claim?

**A8:** Shareholders are not considered creditors of the debtor[^33] and do not file claims in the insolvency procedure[^34].

Although the code does not contain anything relevant, it can be assumed that if the claims of all creditors of the insolvency are satisfied, any remaining surplus is transferred to the debtor[^35] and will be distributed to shareholders upon liquidation. However, in the event that the domestic insolvency is a secondary procedure under Council Regulation 1346/2000 (EIR), then any residual amount shall be immediately transferred to the liquidator in the main proceedings[^36].

9. Can shareholders continue to trade and transfer shares after the initiation of an insolvency proceeding affecting the company?

**A9:** The Insolvency Code does not impose any automatic changes on the status of shareholders and their rights[^37] upon the declaration of insolvency.

As a general rule, shareholders can continue to trade and transfer their shares under the same rules and conditions as prior to the inception of insolvency proceedings[^38].

However, as regards listed companies, law 3371/2005 provides that the stock exchange can suspend the trading of shares of listed companies to ensure the smooth operation of the market and the protection of the investors[^39]. Insolvency proceedings can be grounds for the triggering of such suspension[^40].

10. Do shareholders have the right to request that a shareholders’ meeting is held, even if the company is insolvent? (If there are separate reorganization and liquidation procedures, does this affect the response?)

[^34]: For shareholders’ claims for loans to the company, see A6 above.
[^36]: Article 35 EIR. By contrast, there is no provision for any surplus in the main proceedings to go to creditors in any secondary proceedings, See Moss G, Fletcher I, Isaacs S, The EC Regulation on insolvency proceedings, OUP, p., 225 and Perakis ibid, p., 389.
[^38]: But see
[^40]: See a recent decision of the President of the ATHEX Board of Directors, on the suspension of trading of the shares of a listed company [http://www.athex.gr/content/en/Ann.asp?AnnID=169237](http://www.athex.gr/content/en/Ann.asp?AnnID=169237)
A10: Under set qualifications, shareholders have the right to request that a Shareholders’ Meeting is held as provided under company law, given that the company organs are maintained after the declaration of insolvency proceedings.

Nevertheless, this does not mean that the company organs continue to have the authorities they had prior to the declaration of insolvency. Upon the inception of insolvency proceedings the debtor is divested of the estate. This means that the administration and disposal of the insolvency estate passes to the Syndic. However, the Shareholders Meeting, the Board of Directors etc., continue to be responsible for all non-property related, inter-company matters concerning the organisational structure of the debtor. This is in line with community law, at least to the extent concerning the exclusive authority of the shareholders meeting to decide the share capital increase or decrease during insolvency proceedings, as evidenced by consistent ECJ rulings.

The Board of Directors is therefore the competent organ to call the Shareholders Meeting and not the Syndic, who is an ex lege insolvency organ but not a company organ. Nevertheless, when the SM is asked to decide upon matters that have to do with the property of the company then the Syndic has the right to request such SM meeting.

41 Following the request by the shareholder(s) representing 1/20 of the paid-up share capital, the Board of Directors must convocate an extraordinary Shareholders meeting. If the SH is not convoked by the BoD from the service of the relevant request, the convocation is made by the requesting shareholders at the expense of the company by decision of the Single Member Court of First Instance of the company’s seat, see article 39 (1) CL 2190/1920.

42 Article 96 (1) IC. This is also the case in the event of reorganisation proceedings, see Marinos M, The reorganization plan under the IC [...] Comments on the interrelationship of insolvency and company law, Chronicles of Private Law I/2010, p., 4


44 Article 17 IC. It should be noted that the Greek insolvency code also provides for debtor in possession proceedings, where the Court can assign to the debtor the administration (management and disposal) of the insolvency estate, with or without restrictive terms, always with the participation of the Syndic, see article 18 (1) IC.

45 Article 17 (1) IC.


47 See Marinos M, The reorganization plan under the IC [...] Comments on the interrelationship of insolvency and company law, Chronicles of Private Law I/2010, p., 6 and supra note 31 therein, with references to ECJ cases C-19/90, C-20/90 etc.


49 Marinos M, ibid., p., 556. It is also suggested that because the calling of the Meeting will result in expenses that will burden the insolvency estate, the Syndic’s consent will have to be obtained irrespective of whether the Meeting will decide upon matters that affect the insolvency estate, Marinos M, p., 556.
Special Liquidation

Finally, under article 106k (6), upon the publication of the decision for the opening of special liquidation proceedings, the power of the statutory bodies of administration and management of the business is vested, as a whole, to the appointed liquidator.

Pre-insolvency Rehabilitation

There is no divestment in the pre-insolvency rehabilitation and company organs remain in place with their powers and authorities intact. Shareholders can request that a Shareholders' Meeting is held under the company law provisions above.

11. Do shareholders have the right to request information in an insolvent company?

Do they have information rights as to the progress of a reorganization procedure? Can they exercise that right vis-à-vis the directors of the company - if they remain in charge of the company - or vis-à-vis the insolvency representative?

A11: As a general rule, shareholders can exercise their right to request information from an insolvent company. The right to obtain information is considered one of the fundamental rights of shareholders and is expressly provided under Greek company law. The insolvency code does not limit such right. In fact, as already stated (see A10), the IC provides that the company organs remain in place and, although their operation is inevitably restricted, they are not totally deprived of their responsibilities, given that this would mean their de facto abolishment.

Depending on the nature of the information requested, the right is vested on each shareholder individually, on shareholders representing 1/20 of the share capital, and the shareholders representing 1/5 of the share capital. The right for information is exercised against the company, as represented by the BoD, unless the requested information pertains to property matters of the insolvency estate. In that case, the request for information is addressed to the Syndic.

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50 Athens Single Member CFI 13023/1984.
52 Article 39 (4)-(6), Codified Law (CL) on companies limited by shares 2190/1920.
54 Article 39 (4)(a), CL 2190/1920.
57 Marinos M. The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 563
58 Marinos M, ibid p., 563.
Company law provides that the more sensitive the information, the higher percentage of share capital is required in order to make such request. For example, any shareholder, irrespective of the number of the shares he holds, can request specific information with respect to the company matters, to the extent this is useful in order to assess the items on the agenda (article 39 (4) CCL 2190/1920). Following the request of shareholders representing 1/20, the BoD must inform the SM on the amounts paid to Directors over the course of the preceding two years (article 39 (4) CCL 2190/1920), whereas shareholders of 1/5 can ask all relevant information pertaining to the company’s business and its financial position (article 39 (5) CCL 2190/1920)\textsuperscript{59}. This way, the legislator purports to balance the interest of shareholders to obtain knowledge and the interest of the company to protect sensitive information.

The board of directors may refuse to furnish such information, on the condition that there is a specific and significant reason for doing so\textsuperscript{60}. This must be stated in the minutes. Such reason may be, depending on the case, the representation of the requesting shareholders in the Board of Directors (see appointment of Directors below)\textsuperscript{61}. The necessity of restrictions within the above context is also recognised by article 9 (2) Directive 2007/36/EC\textsuperscript{62}.

Shareholders could also establish grounds for the request of information on the provisions of the Greek Civil Code and specifically articles 902 and 903 on the production of documents\textsuperscript{63}.

Another channel of information could be through Directors, when shareholder(s) have appointed a BoD member(s) \textsuperscript{64}, see article 18(3) CL 2190/1920 which provides that “the articles of association may give to any specific shareholder or shareholders the right to appoint members of the Board of Directors not exceeding one third of their total number […]”.

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\textsuperscript{59} The Articles of Association may decrease, but not for more than half, the percentages of the share capital required to exercise the rights to request information, see article Article 39 (9), CL 2190/1920.

\textsuperscript{60} Article 39 (4), (5), CL 2190/1920.

\textsuperscript{61} Article 39 (4), (5), CL 2190/1920.

\textsuperscript{62} Article 9 (2), Directive 2007/36/EC provides that “The right to ask questions and the obligation to answer are subject to the measures which Member States may take, or allow companies to take, to ensure the identification of shareholders, the good order of general meetings and their preparation and the protection of confidentiality and business interests of companies. Member States may allow companies to provide one overall answer to questions having the same content”, see also Drakopoulos P, The law of sociétés anonymes, Vol., II, 2010, (Perakis ed), NB (Nomiki Bibliothiki), p., 1514.


12. Can shareholders make proposals for nomination of directors, if the directors continue managing the company?

A12: The directors may continue to manage the company under the debtor in possession proceedings available in the IC (article 18). It is important to note that (compared to other jurisdictions) the DIP procedure is discretionary and not awarded automatically under any type of proceedings of the IC. When the insolvency is declared on the debtor’s application (voluntary proceedings), the insolvency court can assign to the debtor the administration (management and disposal) of the insolvency estate\(^{65}\), providing of course that the Court is convinced that this would be in the interest of creditors and that the creditors committee concurs\(^{66}\). The Court can impose the restrictions it deems necessary and in any event the debtor’s administration is under the supervision of the Syndic\(^{67}\).

However, the IC does not provide any rules on the appointment/nomination of directors upon the inception of DIP proceedings. The position is governed by company law provisions. As a general rule, the Shareholders Meeting has the exclusive competence to elect BoD members\(^{68}\) and under Greek law shareholders can nominate directors in the Shareholders Meeting.

The company’s bylaws may also provide that candidates for election on the BoD are proposed by shareholders on the basis of lists and that members are elected among them on the ratio of votes received by each list in the Meeting\(^{69}\). This means that the Meeting does not select the members of the BoD in its absolute discretion but is required to elect the candidates nominated by the shareholders in the lists\(^{70}\).

The bylaws can also determine the specific conditions on which the shareholders may nominate candidates for the said lists\(^{71}\). They may set a necessary number of

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\(^{65}\) Article 18 (1) IC.

\(^{66}\) Athens Multi-Member CFI 747/2009.

\(^{67}\) See also article 78 IC which provides that “[...] upon application of anyone who has a legitimate interest, allow temporarily the continuation of the business activities of the debtor, by the debtor or by the syndic, if it is proven that this serves the interests of creditors and to the extent this is necessary for maintaining the intangible value of the business”. For the differences between article 18 DIP and article 78 see Marinou M, Comments on Athens Multi-Member CFI 747/2009, Chronicle of Private Law, I/2010, p., 292.


\(^{69}\) Article 18 (6) IC.


\(^{71}\) Papadopoulos A, Sociétés anonymes, Vol., II, (Antonopoulos/Mouzoulsa ed.), Sakkoulas, 2013, p., 43. See also article 25 (2) L. 3604/2007 « the bylaws may provide that a legal entity can be a member of the BoD ». 
shares which the shareholder must have to nominate candidates or provide for the right of each shareholder to draft its own list\textsuperscript{72}. The bylaws may impose restrictions on who can be elected Director, providing for example that only shareholders could act as Directors of the company etc.\textsuperscript{73}

In any case, the election of BoD members by the Meeting on the basis of lists of persons nominated by shareholders is not permitted where the company bylaws provide for a right of direct appointment of BoD members by shareholders\textsuperscript{74}. Article 18 (3)-(5) provide that the company bylaws may give to any specific shareholder(s) the right to appoint members of the BoD not exceeding one third of the total number\textsuperscript{75}.

13. If special categories of shares exist whose holders are granted additional governance rights, are these additional rights affected by the opening of an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

A13: Greek company law provides for the issuance of special categories of shares by way of an exception from the rule that all shareholders in the same position must be equally treated by the company\textsuperscript{76}. However, the privileges that accompany preferred shares can only be of financial nature\textsuperscript{77} and cannot afford

\textsuperscript{72}{ Mouzoulas S, Law 3604/2007 on the reform and amendment of CL 2190/1920 on sociétés anonymes, Sakkoulas, 2008, p., 295 et seq. for practical limitations.}

\textsuperscript{73}{ Sinanioti A, Companies, Vol. 2, Sakkoulas, 2010, p., 303. See also article 10 (3) CL 2190/1920 which provides that « persons that [...] transfer to the company objects for continuous exploitation [...] cannot be appointed as directors », noting that this limitation is subject to time restrictions. Also, article 37 (4) CL 2190/1920 provides that the directors and auditors of the company could not coincide. Also, according to the Greek Constitution, “the duties of Members of the Parliament are incompatible to the capacity of [...] directors [...]” (see 57 (1), Constitution). The role of directors is also prohibited for Magistrates (see article 89, Constitution), public servants (article 32 (2) L. 2683/1999), lawyers (see article 63 (2), Lawyers Code). As regards listed companies, independent and non-executive members, while in office are not allowed to hold more than 0.5% of the company’s share capital and cannot be in a situation of dependence with the company or a connected person, see article 4 (1) L. 3016/2002. Also, see Livadas X, The law of sociétés anonymes, Vol., I, 2010, (Perakis ed), NB (Nomiki Bibliothiki), p., 891}

\textsuperscript{74}{ Article 18 (6) IC.}

\textsuperscript{75}{ Article 18 (3) IC.}

\textsuperscript{76}{ Article 30 CL 2190/1920, see also Rokas N, Commercial Companies, Sakkoulas, 5th ed, 2006, p., 360. See also article 17 Law 3556/2007 on the equal treatment of shareholders for listed companies. Also, article 1 Law 3723/2008 provides for privileged shares for banks. Finally, Greek company law also provides for privileged shares without a voting right, see Athens CA 5952/2004 DEE 2005, 172 and Velentzas Y, Société anonyme, IuS Nomiki Trapeza, 2008, 437.}

\textsuperscript{77}{ Rokas N, Commercial Companies, Sakkoulas, 2008, p., 393. Also, the numerous clauses rule, which applied to Greek law and provided that only the privileges expressly stipulated in the law could be granted to preferred shares, has now been abandoned by domestic legislation with law 3604/2007, see Vervesos N, The law of sociétés anonymes, Vol., I, 2010, (Perakis ed), NB (Nomiki Bibliothiki), p., 134. The law provides an indicative list of privileges for preferred shares, see article 3, CL 2190/1920 under which the bylaws may provide for a preference right in favour of shares, consisting in the partial or total collection of the distributed dividend, prior to common shares, the preferential reimbursement out of the proceeds of the liquidation of the company’s assets etc. However, the company is free to provide in the bylaws its own privileges for special categories of shares which the shareholder must have to nominate candidates or provide for the right of each shareholder to draft its own list. The bylaws may impose restrictions on who can be elected Director, providing for example that only shareholders could act as Directors of the company etc. In any case, the election of BoD members by the Meeting on the basis of lists of persons nominated by shareholders is not permitted where the company bylaws provide for a right of direct appointment of BoD members by shareholders. Article 18 (3)-(5) provide that the company bylaws may give to any specific shareholder(s) the right to appoint members of the BoD not exceeding one third of the total number.
special governance rights, with domestic company law not providing for multiple voting rights or golden share privileges. The question is therefore inapplicable in the case of Greece.

14. Can shareholders challenge the decisions of the shareholder meeting, if it is still active? Do they retain the possibility of taking action against the acts of the directors? And against the acts of an insolvency representative? Is any authorization by a judicial or administrative body required to do so or, more generally, to exercise corporate rights? (If there are separate reorganization and liquidation procedures, does this affect the response?)

A14: The IC expressly provides in article 96 (1) that the company organs are maintained after the declaration of insolvency. Consequently, the Shareholders Meeting remains in place after the inception of insolvency proceedings (see A28). As regards the challenging of the decisions of the shareholders meeting, Greek company law makes a distinction between the annulment and the nullity of the Meeting’s decisions.

The annulment of a shareholders meeting decision may be requested by a shareholder who owns shares representing 2/100 of the capital, providing that he was not present at the Meeting or opposed the decision. The annulment is requested by a civil lawsuit on the grounds that the decision was taken in a way that is not in accordance with the law or the company bylaws or where the Shareholders Meeting was not dully convoked or constituted (i.e. mainly defects of procedural nature, also see below for nullity). A Meeting’s decision may also...

shares on the condition that these are of financial nature and are not in breach of the restrictions imposed by the provisions of article 44a 2190/1920. Article 44a CL 2190/1920 provides that no distribution to the shareholders can take place if the total shareholders’ equity is, or will be as a result of the distribution, lower than the share capital etc.


79 See article 35c CI 2190/1920, on nonexistent decisions and also

80 The shareholders’ capacity must be evidenced both at the time of the filing of the action and at the time of the hearing, see article 35a (8) CL 2190/1920.

81 Article 35a CL 2190/1920, also see Bexlivanis A, Sociétés anonymes, Vol., II, (Antonopoulos/Mouzoulas es), Sakkoulas, 2013, p., 684. On the possible restrictions on the exercise of the shareholders right to challenge the decisions of the shareholders meeting (applying to both annulment and nullity) see Karamanakou E, The duty of faith of the minority shareholder, DEE 12/2009, p., 1327 arguing that in cases where the right to challenge the decisions of the Meeting is exercised exclusively with a view of serving the interest of the shareholder making such challenge and in the detriment of the company’s interests and of the remaining shareholders, then this is not considered permissible on the basis of the duty of faith of shareholders.

82 The action is brought against the company and is heard by the Multi-member CFI of the district where the company has its registered seat, see article 35a (6)-(7) CL 2190/1920.

83 Article 35a CL 2190/1920. This provision is influenced by article 2377 para. 2 of the Italian Civil Code “ le deliberazioni che no sono prese in conformita della legge o della statuto possono essere impugnate…” see Giovannopoulos R. The law of sociétés anonymes, Vol., I, 2010, (Perakis ed), NB (Nomiki Bibliothiki), p., 1334.
be annulled if taken without providing the required information that was requested by the shareholder bringing the action to annul the decision or in cases of an abuse of right by the majority contrary to good faith etc (see article 281 GrCC). An example of an abusive use of right by the majority would be a decision that is contrary to the interests of the company, meaning a decision contrary to the interest of the shareholders. Shareholders who do not satisfy the minimum 2% of shares that is required in order to request the annulment may also claim restitution of their damages caused by the decision of the Shareholders Meeting. The deadline for filing an action for annulment is three (3) months as of the time the relevant minutes were submitted to the competent authority or the time the decisions was registered. The same deadline applies to the above action for damages.

As regards the nullity of decisions, a shareholder may invoke such nullity on the grounds that the shareholders meeting was not convoked or that the content of the decision is contrary to the law or the bylaws. There is no minimum number of shares required and any shareholder may invoke nullity. Also, the deadline to do so is one (1) year as of the time the relevant minutes were submitted to the competent authority or the time the decisions was registered.

As regards actions against Directors, Greek company law does not allow for derivative actions. Therefore, what a shareholder can do is request the BoD to bring such (company) action against Directors. However, there are cases where shareholders can individually bring a claim against Directors, but only for direct damages and providing that the damaging act also constitutes a tort towards them, giving rise to a direct and autonomous obligation to compensate. Article

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84 Greek law accepts that the interests of the company coincide with the interests of the shareholders (monism), see Bexliavanis A, Sociétés anonymes, Vol., II, (Antonopoulos/Mouzoulas es), Sakkoulas, 2013, p., 701.
85 See article 35a (7) CL 2190/1920. The three month deadline that is provided in the code cannot be shortened or extended by stipulation in the bylaws, see Marinos M, The individual right of shareholders for information [...], Sakkoulas 2009, p., 307.
86 As well as any other third person having legal interest, see article 35b (4) CL 2190/1920.
87 See article 35b (1) CL 2190/1920.
88 See article 35b (4) CL 2190/1920.
89 In the event of insolvency the debtor is divested of the estate and only the Syndic has legal standing in trials regarding property of the estate, see article 17 (4) IC. See also Kotsiris I, Insolvency Law, 2011, Sakkoulas, p., 290 and fn 115.
90 Shareholders representing 1/10 of the paid up share capital may also request the BoD to invoke such company claims against the Director(s), see article 22b(1) CL 2190/1920 and note that the bylaws can provide for a reduced percentage.
91 An example of direct damages is when the share value is reduced by an unlawful share capital increase, precluding the shareholders preemption rights. An example of indirect damages would be a drop in the share price.
98 of the IC also contains provisions on Directors liability for failure to file an insolvency petition within the time limits prescribed in the code\(^{93}\), or where the company’s insolvency was caused by wilful misconduct or gross negligence\(^{94}\). Nevertheless, only creditors have the right for damages under article 98 and the relevant claims under this proviso are exercised by the Syndic\(^{95}\).

With reference to actions against the insolvency representative (Syndic), the IC provides that the Syndic may be personally liable against third parties for damaged by his activity, only for malice or gross negligence\(^{96}\). The law does not specify who can be such third party, so there could be any person against which the Syndic may be liable in tort\(^{97}\). Shareholders do not to appear to be excluded\(^{98}\).

15. Do shareholders have the right to call a special investigation of the affairs of the insolvent company?

A15: No such formal procedure is provided for under the IC\(^{99}\). However, as obliged by the IC, the Syndic will be anyway looking into the debtors affairs in order to prepare his report on the financial position of the debtor as well as the causes of the insolvency etc\(^{100}\). Specifically, upon the declaration of the insolvency the debtor’s business books are delivered\(^{101}\) to the Syndic\(^{102}\) who

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93 The Greek Insolvency Code provides that the debtor is obliged to file for insolvency within thirty (30) days as of the time of the cessations of payments, i.e. the time that the insolvency test is satisfied, see articles 5 (2) and 3 (1) IC.

94 Article 98 IC.

95 See article 98 (3) IC. For the syndic’s liability for not exercising such claims see Art 80 IC on the general provisions on the Syndic’s civil liability.

96 Article 80 (2) IC. See also article 80 (1) IC, which provides that the Syndic is liable against the debtor and the group of creditors for all damages to the insolvency estate caused by his fault [...].


98 However, shareholders cannot in their own capacity request the replacement of the Syndic, see article 79 IC. The Court can replace the Syndic at any time for cause, upon a proposal from the court rapporteur acting ex officio or on a request by a creditor or the creditors’ committee or the debtor, see Perakis E, Insolvency law, 2010, NB, p., 123.

99 However, Greek company law provides that shareholders holding 1/20 of the paid-up share capital can request from the Court the company’s extraordinary audit on the grounds that certain acts violate the provisions of the law, the bylaws or the decisions of the Shareholders Meeting (Article 40 (1)-(2) CL 2190/1920. The competent court is the Single Member CFI of the district where the company has its registered seat). Shareholders holding 1/5 of the paid up share capital have the right to petition the Court to request the audit of the company on the grounds that the management of the company’s affairs was not exercised in a good and prudent manner (Article 40 (3) CL 2190/1920).

100 See article 70 IC on the Syndic’s report, which is submitted to the creditors meeting.

101 Within the context of the debtor’s obligation to inform and collaborate with the Syndic, there is an express proviso requiring the debtor to make available to the Syndic the business books and other information kept (which is either required by law or not) in relation to the business, see article 20 IC on the obligation to collaborate and article 20 (2) IC on the requirement to deliver the books. Under the criminal provisions of the IC, there is a two years imprisonment sentence and a pecuniary fine to anyone, who, at any time during the suspect
examines them together with all other relevant information and drafts his report\textsuperscript{103}.

16. Does the law provide for the establishment of a shareholders’ committee (or several committees, in case of different share classes)? What are their powers? Who bears the related costs?

A16: Greek insolvency law does not provide for a shareholders committee\textsuperscript{104}. Any such advisory committees/boards etc would not have any recognized powers or role in insolvency proceedings in Greece.

17. Can shareholders voluntarily transfer shares of the company undergoing insolvency proceedings against any provisions in the articles/bylaws restricting transfers of shares?

A17: No, shareholders of a company undergoing insolvency proceedings cannot transfer shares contrary to the relevant restrictions in the bylaws. It should be noted that the bylaws can only restrict the transfer of registered shares\textsuperscript{105}. Blocked shares can only be transferred upon the consent of the competent company organ designated in the bylaws (Shareholders Meeting, BoD)\textsuperscript{106} and under the terms and conditions specified therein\textsuperscript{107}. When the bylaws do not make any reference to the company organ with authority to grant consent for the transfer of blocked share, then the competence rests with the Board of Directors, as the organ assigned with the protection of company interests\textsuperscript{108}.

In the event of insolvency, the competence to consent to the transfer remains with the BoD, except for shares that have not been fully paid-up, where the Syndic has the competence to grant the approval, given that the transfer is connected with the interests of the insolvency creditors\textsuperscript{109}.

\begin{footnotes}
\item[102] Article 11 (4) IC.
\item[103] Article 70 (1) IC.
\item[104] For the insolvency organs under the IC see article 52 IC, which provides for the insolvency court, the Judge rapporteur, the Syndic, the creditors meeting and the committee of creditors, see also \textit{Kotsiris L}, Insolvency Law, 2011, Sakkoulas, p., 468 et seq.
\item[105] Article 3 (8) CL 2190/1920. For listed companies see article 7 (9) L. 2843/2000 and Section 3.1.2.7 of the Stock Exchange Regulation, see also \textit{Vervesos N}, The law of sociétés anonymes, Vol., I, 2010, (Perakis ed), NB (Nomiki Bibliothiki), p., 134.
\item[106] Article 3 (7) CL 2190/1920, see also \textit{Rokos N}, Commercial Companies, Sakkoulas, 5\textsuperscript{th} ed, 2006, p., 354.
\item[107] The bylaws may also provide for other restrictions to the transfer of registered shares, like the prohibition of the transfer if the shares have not been previously offered to the rest of the shareholders etc, see article 3 (7) CL 2190/1920.
\end{footnotes}
18. Can outstanding shares of the company undergoing insolvency proceedings be assigned to third parties without the consent of the relevant shareholders? If yes, under what conditions? Are existing shareholders entitled to compensation? What other safeguards are provided? (e.g., does the law include a principle according to which the affected shareholders should not receive less than in a liquidation procedure?)

A18: No, outstanding shares of the company undergoing insolvency proceedings cannot be transferred to third parties without the consent of the relevant shareholders. If the reorganisation plan provides for the transfer of shares to third parties, the affected shareholder must provide its consent.

19. Can outstanding shares of the company undergoing insolvency proceedings be cancelled without the consent of the relevant shareholders? If yes, under what conditions? Are existing shareholders entitled to compensation? What other safeguards are provided? (e.g., does the law include a principle according to which the affected shareholders should not receive less than in a liquidation procedure?)

A19: In broad brush, the cancellation of shares is possible under Greek law and falls within the context of a share capital decrease. The law does not provide for specific techniques to decrease the share capital. This gap has been filled by legal theory. In any case, on account of the principle for the equal treatment of shareholders, it is crucial that that the method selected to effect the share capital decrease should result in the minimum possible discriminations between shareholders.

The cancellation of the shares is decided by the Shareholders Meeting. When the relevant shareholder does not consent, the cancellation of its shares may only be effected when there is a relevant provision in the bylaws, stating that the company may unilaterally proceed to the cancellation of shares. The bylaws must further provide the terms of such cancellation, i.e. whether a certain category of shares will be cancelled etc. In any case though, it is necessary to adhere to the principle of the equal treatment of shareholders. Such principle is not infringed when a proportional number of shares is cancelled from each

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111 See article 109 (3) IC and Marinos M, The ibid, pd., 7.
shareholder or the shares that will be cancelled are selected with a draw\textsuperscript{116}. The shareholder is entitled to receive the stock exchange value or (for not listed shares) the real value of its shares in money\textsuperscript{117}. The Syndic’s consent is also required.

Also note that there are cases where the company is obliged to proceed to the cancellation of shares. Specifically: a) three months after the expiry of any deadline set for the payment of part of the value of shares, any shares for which the requested instalment has not been paid become \textit{ipso jure} null and void and the company must proceed with the sale of new shares equal in number to the ones cancelled\textsuperscript{118} and b) own shares acquired by the company and not transferred within the prescribed time must be cancelled\textsuperscript{119}.

\textbf{20. Do shareholders of the company undergoing insolvency proceedings have pre-emption rights over new issues of shares\textsuperscript{120}? Are there special conditions for the suppression of pre-emption rights if the company is insolvent (if there are separate reorganization and liquidation procedures, does this affect the response?).}

\textbf{A20:} The IC does not contain provisions on the preemption rights of shareholders of a company undergoing insolvency proceedings. Therefore, the position shall be established by reference to company law, to the extend that this does not breach IC provisions.

Greek company law provides that in all cases of a share capital increase, which is not made through a contribution in kind or issuance of bonds which are convertible to shares, a preference right is granted for the full amount of the additional capital or the bond loan, in favour of shareholders at the time of the issue in proportion to the participation in the existing share capital\textsuperscript{121}.

\textit{Company law}

Insolvency itself does not necessarily affect such right afforded to shareholders. Nevertheless, the pre-emption rights of shareholders may be suppressed, most likely within the context of corporate insolvency rescue proceedings. The Shareholders Meeting can in fact decide to limit or even cancel the preemption

\begin{itemize}
\item \textsuperscript{116} \textit{Sotiropoulos G}, The law of sociétés anonymes, Vol., 1, 2002, (Perakis ed), NB \textit{(Nomiki Bibliothiki)}, p., 536.
\item \textsuperscript{117} \textit{Rokas N}, Commercial Companies, Sakkoulas, 5\textsuperscript{th} ed, 2006, p., 423.
\item \textsuperscript{118} Article 12 (2) (e) CL 2190/1920.
\item \textsuperscript{119} Article 16 (6)-(7) CL 2190/1920.
\item \textsuperscript{120} Please note that the power to decide new issues or conversions of shares, as well as the power to decide operations that affect the structure of the corporate entity (e.g., by merger, spin-off, or change of the legal form) are dealt with in Questions 33 and 34 below.
\item \textsuperscript{121} Article 13 (7) CL 2190/1920. The bylaws may extend the preference right also in cases of increase through contributions in kind or through the issuance of bonds convertible to shares [...].
\end{itemize}
rights of shareholders, subject to both procedural and substantial requirements, which need to be satisfied when effecting such restriction to a fundamental right of shareholders.

First, only the extraordinary Shareholders Meeting has competence to make such decision. In practice, this means that an increased quorum of 2/3 is required. Furthermore, the Board of Directors must provide the Shareholders Meeting with a written report citing the very specific reasons pertaining to the particular share capital increase which necessitate the restriction or cancellation of the right of pre-emption, further justifying the proposed issue price. The BoD report will also form the basis of a potential judicial review, if the Court is called to determine the legality of the decision.

The substantial requirements that the SM decision will need to satisfy are not expressly referred to in the law. In general though, domestic jurisprudence accepts that the decision restricting pre-emption rights should be reviewed against the principles of a) the equal treatment of shareholders, b) the corporate interest and c) the duty of faith between shareholders and against the company.

**Informal workouts (non-insolvency)**

As regards informal workouts, legal theory suggests that on the balance of the above criteria, a cancellation of pre-emption rights can indeed be justified when a company is unable to satisfy its obligations. For example a company in distress may issue new shares which will be acquired en bloc by an investor as part of a...
rescue attempt\textsuperscript{131}. The corporate interest makes this a necessary measure and, by the same token, the cancelation of the pre-emption right is both reasonable and permissible\textsuperscript{132}.

**Rehabilitation (pre-insolvency procedure)**

Shareholders’ pre-emption rights may too be affected in pre-insolvency rehabilitation proceedings. As a general rule and on the basis of the freedom of contract, the parties to the rehabilitation agreement have substantial contractual liberty, so long as the agreed terms\textsuperscript{133} are oriented towards the rescue of the business\textsuperscript{134} and do not impair the collective satisfaction of creditors\textsuperscript{135}, on the condition of course that the resulting rehabilitation agreement satisfies the criteria that the IC sets for the ratification of an agreement by the Court\textsuperscript{136}.

Therefore, the plan may provide for a share capital increase\textsuperscript{137}, requiring in this context that shareholders preference to the new issue of shares is cancelled (for example the shares will be acquired by a new investor).

As already provided above, to suppress the pre-emption right of shareholders, a resolution of the SM\textsuperscript{138} on the matter is necessary\textsuperscript{139}. When a decision of the Shareholders Meeting is required for the fulfilment of certain conditions of the rehabilitation agreement, the relevant decision is either taken before the rehabilitation agreement is executed by the debtor or is made a condition precedent for it to enter into force\textsuperscript{140}. This means that if the SM does not decide on the share capital increase\textsuperscript{141} or on the cancellation of the pre-emption

\textsuperscript{131} ibid.
\textsuperscript{132} Ibid.
\textsuperscript{133} The IC contains an indicative list, as this has emerged by international practice and domestic jurisprudence on the possible contents of the rehabilitation plan, see article 106e IC.
\textsuperscript{134} Rokas A, Pre-insolvency rehabilitation procedure for companies, 2014, Sakkoulas, p., 202 and article 99 (2) IC which provides that “rehabilitation is a collective pre-insolvency procedure, aiming to preserve, utilize, restructure and achieve the recovery of the business without impairing the collective satisfaction of creditors. See also Avgitidis D. Business rehabilitation through pre-insolvency agreements, 2011, p., 255 and Psychomanis S. Insolvency law, 4th ed., 2011, p., 105 et seq.
\textsuperscript{135} When non-contracting parties to the rehabilitation agreement get less under the agreement than they would have got in enforcement proceedings or in liquidation, see article 99 (2) IC.
\textsuperscript{136} Article 106g IC and Athens Multi-member CFI 539/2012, Athens Multi-member CFI650/2013.
\textsuperscript{138} Note that as already provided above, the Shareholders Meeting can authorize the Board of Directors to decide on the restriction of preemption rights, see above Psaroudakis G, 2013, p., 820.
\textsuperscript{139} See article 13 (10) CL 2190/1920 and article 29 (4), Second Council Directive 77/91/EEC.
\textsuperscript{140} Article 106c (1). See also the Explanatory Report to L.4013/2012, Art. 106c which provides that the IC does not follow the example of the previous legislation (article 44 L. 1892/1990) where the consent of the majority of the shareholders was necessary for the conclusion of a rehabilitation agreement with the creditors. Although not an ab initio requirement for the conclusion of a rehabilitation agreement, still the decision of the SH may be necessary for matters regulated by rehabilitation agreement where the decision of the SM is dictated under company law (article 106c (1) IC).
rights then a proposed rehabilitation plan which substantially depends upon those conditions, will be short lived.

However, the objection of shareholders may not necessarily lead to a dead-end. Article 106c (2) provides that if one or more shareholders state that they will not attend the relevant meeting or that they will not vote in favour of the corresponding decision, the insolvency Court, when it considers that such refusal is abusive, and upon the request of the debtor or a creditor, may appoint a special representative who will exercise the right to attend and vote instead of those opposing shareholders. A shareholders refusal is abusive, especially if the Court considers that without the conclusion of a rehabilitation agreement, the debtor is expected to become insolvent and that in case of liquidation, the shareholders will not take part in the outcome of liquidation.

In other words, even if there are shareholders opposing the cancelation of their pre-emption rights, the Court, on the above conditions, may substitute their will and the SM can proceed with taking the corresponding decision.

Reorganisation (insolvency procedure)

The position regarding shareholders pre-emption rights in intra-insolvency reorganization resembles to some extent the position under rehabilitation above, with one important distinction that Chapter 7 reorganization does not contain a similar provision to 106c for the judicial substitution in the SH of shareholders opposing the decisions required to effect the measures of the reorganization plan.

Although this is not documented in legal theory so far, it could be argued that the principle of article 106c may be also applied by analogy to reorganization proceedings. Such analogy could be justified on the grounds that first, a judicial interference with the rights of shareholders is far more justified in the Chapter 7 reorganization that takes place within the context of insolvency, which is an institution dominated by the need to protect the interests of creditors, rather than in the pre-insolvency rehabilitation procedure. Second, both rehabilitation and reorganization regulate the matter regarding the SM decision vis-à-vis a rehabilitation/reorganization plan in a similar manner. For instance, like in the case of rehabilitation, Chapter 7 reorganization also requires a decision of the Shareholder meeting for a share capital increase. When the reorganization plan provides for certain measure, then the plan is not ratified by the Court prior to the fulfillment of such prerequisites.

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142 See article 13 (10) CL 2190/1920 and article 29 (4), Second Council Directive 77/91/EEC

143 The judicial substitution of the shareholders will has raised the discussion about the constitutionality of the said provision. The Explanatory Report to L.4013/2012, Art. 106c states in this direction that the abusive use of a property right is not permitted (Article 25 (3) Gr Constitution) and that article 106c does not circumvent the competence of the Shareholders Meeting, see Sotiropoulos G,CLR, 2012, 817.

144 To the extent revealed by the research for the purposes herein.


147 Article 123 (1) IC. See also article 123 (2) where for terms of the plan concerning corporate governance changes, especially conversion, merger or revival, the insolvency court may, at its discretion make the
Third, one of the main pillars for the application of article 106c is that without the intervention of the Court, the debtor is expected to become insolvent\textsuperscript{148}. Chapter 7 reorganization is by default oriented towards the rescue of the business, further noting that the very first article of the IC which provides the purpose of the insolvency places particular emphasis to the preservation of the business. In any case, an express legislative provision like article 106c may not be necessary in addressing the problem of shareholders, who, in an abusive manner, block a SM decision and by the same token the reorganization plan. The problem has been addressed by other jurisdictions with case law rules, which provide that the duty of faith that shareholders have precludes them from abusively denying to consent to a workout, when this is the only way to rescue the business\textsuperscript{149}.

Nevertheless, if the IC intended for the shareholders rights to be so immensely affected in reorganization proceedings, then the legislator would have included an express provisions also in Chapter 7 reorganization. Perhaps, reserving the ambit of article 106c only for rehabilitation was a conscious effort to distinguish and promote the pre-insolvency proceedings of the code. The only provision in Chapter 7 with some resemblance to article 106c is article 120 which presumes, under set conditions, the consent of the debtor to a reorganization plan proposed by the Syndic. However, article 120 does not reach out to shareholders given that the competent company organ to grant such consent under the said provision is the Board of Directors\textsuperscript{150}. Therefore, under article 120 the approval of the Shareholders Meeting is still necessary when the Syndic proposed plan provides for company changes of a structural nature\textsuperscript{151}. Therefore, although an argument in favour of an analogy application of article 106c to reorganisation is fully supported on a \textit{de lege ferenda} basis, the argument may be losing some of its strength from a \textit{de lege lata} point of view.

\textit{Insolvency (liquidation etc) }

A share capital increase decided prior to the inception of insolvency may not be concluded after the inception proceedings\textsuperscript{152}. The inflow of new funds is not against the scope of insolvency proceedings but a new decision of the SH is required\textsuperscript{153}, which will too determine whether there will also be a cancelation of pre-emption rights under the provisions of company law above.

\textsuperscript{148} [...] It is deemed that the shareholders or the partners refuse abusively, especially if the court considers that without the conclusion of a rehabilitation agreement, the debtor is expected to become insolvent [...].

\textsuperscript{149} See Rokas A, Pre-insolvency rehabilitation procedure for companies, 2014, Sakkoulas, p., 189 and footnotes 506-507 noting that that the duty of faith argument is fainting in cases where such workout is within the context of an insolvency procedure.

\textsuperscript{150} See A33.

\textsuperscript{151} Marinos M, The reorganization plan under the IC [...] Comments on the interrelationship of insolvency and company law, Chronicles of Private Law I/2010, p., 9.

\textsuperscript{152} Triantafillakis ibid, p., 640.

\textsuperscript{153} Triantafillakis ibid, p., 641.
21. Can shareholders retain a participation in the company that has emerged from an insolvency process (or in the company to which the insolvent company’s assets have been transferred) even if the company was insolvent according to a balance-sheet test? (i.e., where the value of its liabilities exceeds the value of its assets) If yes, under what conditions? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**A21: Rehabilitation (pre-insolvency procedure)**
The rehabilitation agreement may provide for the transfer of all or part of the debtor’s business to a third person or to a company belonging to creditors, according to the particulars specified in article 106i\(^{154}\). Specifically, it is possible to transfer the business or part of it either to a third person, for a monetary consideration, or to a company formed by the creditors, who will contribute in part or all of the obligations against the debtor\(^{155}\). The shareholders of the company cannot retain participation\(^{156}\).

*Reorganisation (insolvency procedure)*
A reorganization plan may too provide for the transfer of the business to a third party\(^{157}\) or the creation of an SPV to acquire the business\(^{158}\).

22. Are the ranking of classes of shares and the preferential rights of classes of shares affected (and if yes, to what extent) by the fact that the company is undergoing an insolvency process? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**A22:** The Greek insolvency code only ranks creditors claims and not classes of shares\(^{159}\). Greek company law also does not provide for the ranking of shares and follows the principle of the equality of shareholders\(^{160}\). Preferred shares are an exception to this the rule and preferred shareholders can be satisfied after creditors but before other shareholders\(^{161}\). Saying that, although the code does not contain anything relevant, it can be assumed that if the claims of all creditors of the insolvency are satisfied, any remaining surplus is transferred to the debtor for distribution in liquidation\(^{162}\). However, see A8 on cross border insolvencies.

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154 Article 106e (1f) IC.
155 Article 106i (2)-(3) IC. The said article also requires compliance with the provisions of articles 9 and 9a of codified law 2190/1920 (Valuation of corporate contributions and Option of non-valuation of the corporate contributions, respectively).
156 Rokas A, Pre-insolvency rehabilitation procedure for companies, 2014, Sakkoulas, p., 211.
157 Article 109 (1)(b)
159 See articles 153 IC et seq.
160 Also see A13 above.
161 Article 3 Cl 2190/1920, also see Perakis E, Insolvency law, 2010, NB, p., 173.
23. Can shareholders, in the course of an insolvency procedure, supply goods, services or financial resources to the company? If yes, under what conditions (e.g., judicial authorization)? What would their ranking position be towards other creditors?

A23: The IC does not contain provisions to prohibit shareholders from providing goods, services or financial resources to the company. Subject to the discussion on nominal undercapitalisation of the company under A6 and A25 (i.e. contributions in the capitalisation of the debtor made in the form of loans etc) shareholding can enjoy the same ranking as creditors when providing goods, services or financial resources to the company.

Under the IC, creditors who provide the debtor, under a rehabilitation agreement or a reorganisation plan, with financing of whatever nature in order to carry on its business and payments, have a super priority in the event of insolvency and rank before unsecured creditors or other creditors with a general lien. This is also the case for any financing, goods or services to the debtor at the time between the application for the opening of rehabilitation proceedings until the ratification of an agreement by the Court, so long as this special lien is provided by the rehabilitation procedure.

24. Can shareholders, in their capacity as counterparties, be under a duty to continue a contractual relationship with the insolvent company during an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?).

A24: As a general rule, contracts concluded between the company and (among other) a controlling shareholder, shall be null and void unless the Shareholders Meeting has granted its permission. This prohibition only applies to contracts that fall outside the current transactions of the company with third parties.

In all other cases where a contractual relationship is not prohibited, the shareholder has the same rights and obligations under the IC as any other contractual counterparty (see also A38). The general rule is that executory

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163 See articles 105 (4)- (5) and 154 et seq IC.
164 For a list of the persons to which the prohibition applies see article 23a (5) CL 2190/1920 applying to BoD members, the persons who exercise control over the company, their spouses and relatives by blood or by marriage up to the third degree, as well as to the legal entities which are controlled by the above.
165 Articles 23a (5) and 42e (5) CL 2190/1920. Also, the bylaws may expand the circle of persons who fall within the scope of article 23a and thus include other shareholders of the company, especially those having a degree of influence over the management, Mouzoulas S, Law 3604/2007 on the reform and amendment of CL 2190/1920 on sociétés anonymes, Sakkoulas, 2008, p., 389.
166 Article 23a (2) CL 2190/1920.
contacts remain in force after the declaration of the insolvency, unless expressly provided in the code\textsuperscript{168}. The Syndic can elect to perform executory contracts and demand performance by the counterparty\textsuperscript{169}. In this case the counterparty becomes a group creditor\textsuperscript{170}.

If the syndic does not exercise his right to perform within a specified period, the counter-contracting party is entitled to set a reasonable deadline for the Syndic to decide whether to proceed with the performance of the agreement or not. If the Syndic does not reply within the reasonable deadline set by the counter party, or if he denies to perform, then the counter contracting party is entitled to withdraw from the contract and to claim damages for non performance, being satisfied as an insolvency creditor.

The IC further provides a \textit{lex specialis} for contracts of a \textit{continuous} nature\textsuperscript{171}. These also remain in force after the declaration of the insolvency. However, the continuation of these agreements does not depend on whether the Syndic will elect to perform or not. These can be terminated either under the ordinary rules governing the termination of agreements (i.e. for cause etc)\textsuperscript{172} or their termination will be brought about by the declaration of the insolvency, if this is provided in the law\textsuperscript{173} or in the agreement\textsuperscript{174}.

25. Can shareholders (or companies of the same group) holding credit claims against the company under insolvency procedure participate in the creditors’ meeting and vote on the insolvency plan without restrictions? (If there are separate reorganization and liquidation procedures, does this affect the response?)

A25: Shareholders are not considered creditors under the Greek insolvency code\textsuperscript{175}. Nevertheless, there are cases where a shareholder may also be a

\textsuperscript{168} Article 28 IC. See also Precocanis, p., 287 for the termination of agreements on the grounds of good faith (Article 281 Greek Civil Code) or on the basis of an express contractual clause.
\textsuperscript{169} Article 29 (1) IC.
\textsuperscript{170} Article 29 (1) IC. Group creditors are satisfied after first deducting judicial costs, the expenses for the administration of the insolvency estate, which include the temporary and final remuneration of the Syndic and before any other super priority claims etc, see article 154 IC. If a group creditor (see A24) created by an action of the Syndic cannot be satisfied from the insolvency estate, the Syndic is obliged to compensate the group creditor, if by gross negligence he failed to diagnose that the estate is not likely to be sufficient for the satisfaction of such group debt, see article 80 (2) IC.
\textsuperscript{171} Article 30 (1) IC, see also Kotsiris L, Insolvency Law, 2011, Sakkoulas, p., 370.
\textsuperscript{172} Perakis E, Insolvency law, 2010, NB, p., 252.
\textsuperscript{173} Examples of agreements where the law provides that the insolvency is a cause for termination include insurance agreements, leasing agreements, public construction works agreements etc, see Precocanis S. Insolvency law, 4th ed., 2011, p., 308.
\textsuperscript{174} Article 32 IC.
\textsuperscript{175} See Marinos M, The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 551 and A6 and A8 above.
creditor of the insolvent debtor. Shareholders, in their capacity as creditors, can participate and vote in the creditors meeting.

26. If shareholders (or companies of the same group) do not hold credit claims against the company under insolvency procedure, must/can they participate in the creditors’ meeting? If that is the case, what rights or duties do they have in that meeting? (If there are separate reorganization and liquidation procedures, does this affect the response?)

A26: No, the IC expressly provides that only creditors can participate in the creditors meeting.

27. Do shareholders in an individual company have information rights as to the filing of insolvency proceedings by the parent or other related companies?

A27: No, see A39.

III. THE ROLE OF THE SHAREHOLDERS’ MEETING IN COMPANIES SUBJECT TO INSOLVENCY PROCEEDINGS

28. Does the shareholders’ meeting continue to exist in insolvency proceedings? (If there are separate reorganization and liquidation procedures, does this affect the response?)

A28: The IC expressly provides in article 96 (1) that the company organs are maintained after the declaration of insolvency. Company organs are all the corporate bodies established under the law and the company’s bylaws. For

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176 Claims vis-à-vis payment of profits, agreements with the company (but see A24 on the prohibition regarding controlling shareholders) loans etc, see Perakis E, Insolvency law, 2010, NB, p., 172. However, see A6 on the discussion regarding nominal undercapitalisation and loans provided by shareholders to the company, whilst such company was in distress and the position on the ranking of such shareholders’ claims. See also Perakis E, Insolvency law, 2010, NB, p., 172, on subordination of preferred shares under article 3 CL 2190/1920, satisfied after all creditors but before all other shareholders, see also article 21 (1)(d) IC on subordinate creditors.

177 All creditors of the debtor participate in the creditors meeting, see article 82 IC and Psychomanis S. Insolvency law, 4th ed., 2011, p., 386. Article 21 (1) list the categories of creditors with an express reference to subordinated creditors. See also article 83 (1) which provides that the first creditors meeting following the declaration of the insolvency and those that follow, until the verification under article 93 is completed, is opened to every creditor present participates, whose claim against the debtor is assumed, in the opinion of the Court rapporteur. After the verification of credits, only creditors whose claims have been accepted can participate at the meeting.

178 Meaning the creditors of article 21 IC, including secured creditors and creditors with a lien and excluding group creditors and post insolventy creditors, see article 83 IC and Perakis E, Insolvency law, 2010, NB, p., 133.

179 Marinos M, The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 528. For companies limited by shares, the company organs are three, the Board of Directors, the General Meeting and the Auditors, Velentzas Y, Société anonyme, uS Nomiki Trapeza, 2008, 525, with Perakis expressing a different view for Auditors, see Kokkinis I, The law of sociétés anonymes, Vol., V, (Perakis Ed), NB, 2002, p., 79.
companies limited by shares, the company organs are three: the Board of Directors, the General Meeting and the Auditors\(^{180}\).

Erstwhile legislation did not explicitly cover the fate of company organs upon the inception of insolvency proceedings but, the predominant position in case law and among commentators was that company organs continue to exist, a position now explicitly reflected in article 96 (1)\(^{181}\).

Upon the declaration of the insolvency, the debtor is divested of its estate\(^{182}\). This means that the syndic is vested with the power to administer and dispose the assets\(^{183}\). However, the debtor continues to have a number of responsibilities and rights, which, in the case of legal entities are fulfilled and exercised through the BoD. The responsibilities of the debtor mainly include the duty to inform and to cooperate\(^{184}\). The debtor also has the right to file a reorganisation plan\(^{185}\).

As regards the Shareholders’ Meeting, it continues to have exclusive competence on set matters, even following the declaration of the insolvency. These include modification of the company’s bylaws, the election of BoD members etc\(^{186}\) (see A29 below).

Although the duties of the shareholders meeting and the BoD are inevitably restricted, they are not totally deprived of their responsibilities, given that this would mean their de facto abolishment\(^{187}\). The company organs continue to be responsible for matters pertaining to the organisational structure of the company\(^{188}\), meaning non-property related, inter-company matters concerning

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\(^{181}\) Piraeus Court of Appeals (CA) 294/2008, see also Perakis E, Insolvency law, 2010, NB, p., 276 and supra note 22 with references therein.

\(^{182}\) Article 17 (1) IC, see also article 18 with the exception provided therein for DIP proceedings.

\(^{183}\) See article 17 (1) which provides that “from the time of the declaration of insolvency, the debtor is ipso jure deprived of the administration (managing and disposing) of his estate (insolvency divestment) [...]”


\(^{185}\) See article 108 (1) and Marinos M, The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 567.


\(^{188}\) Marinos M, The application of the business judgment rule on company and insolvency law, DEE 6/2009 p., 660.
the organisational structure of the debtor, given that the administration of the estate is passed to the syndic\textsuperscript{189}.

However, two points should be noted in relation to the powers of the company organs above. First, the Greek insolvency code also provides for debtor in possession proceedings. In broad brush, this means that under set qualifications (see \textbf{A12}) the insolvency Court can assign to the debtor the administration (management and disposal) of the insolvency estate\textsuperscript{190}. Therefore, in DIP proceedings the BoD will have competence over property related matters too and will manage the estate (with any restrictive terms that may be imposed by the Court and always with the participation of the syndic).

\textit{Special liquidation}

Second, article 106k (6) of chapter 6 governing special liquidation provides that, upon the publication of the decision for the opening of special liquidation proceedings, the power of the statutory bodies of administration and management of the business is vested, as a whole, to the appointed liquidator. Therefore, when a company limited by shares enters special liquidation proceedings, the SH continues to exist but all its powers pass to the appointed liquidator\textsuperscript{191}.

\textit{Pre-insolvency Rehabilitation}

There is no divestment in the pre-insolvency rehabilitation and company organs remain in place with their powers and authorities intact. Shareholders can request that a Shareholders’ Meeting is held under the company law provisions above.

\textbf{29. Does the shareholders’ meeting preserve all of its competences, generally? (If there are separate reorganization and liquidation procedures, does this affect the response?)}

\textbf{A29}: As provided above (see \textbf{A28}), the Shareholders Meeting continues to exists by virtue of article 96 (1) IC. Nevertheless, the declaration of insolvency has an impact on the competence of the SM. In general and as already discussed (\textbf{A10}) the company organs retain their responsibilities as regards non-property related, inter-company matters concerning the organisational structure of the debtor.

\textsuperscript{189} Marinos M, DEE 6/2009 p., 660.

\textsuperscript{190} Article 18 (1) IC.

\textsuperscript{191} Provisions to the same effect also exist under the legislation governing non-insolvency liquidation for companies limited by shares. Codified Law 2190/1920 provides in article 49 (7) on dissolution and liquidation that “the appointment of the liquidators results eo ipso to the cessation of the powers of the Board of Directors”. On the Shareholders Meeting article 49 (3) provides that “the shareholders meeting retains all its rights during the liquidation procedure”.

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Specifically, the matters on which the shareholders meeting has exclusive competence are expressly listed in article 34 of Codified Law 2190/1920 (applicable on companies limited by shares). This provides that the Shareholders Meeting has exclusive competence to decide on: a) the amendment of the company’s bylaws, the increases or reductions of the share capital, b) the election of the members of the Board of Directors and the auditors, c) the approval of the company’s balance sheet (see A30), d) the appropriation of the annual profits, e) the company’s merger, demerger, conversion, revival, extension of duration or dissolution.

Although, the declaration of insolvency restricts such competence to a great extent, it does not entirely deprive the Meeting of its powers. In general, the Meeting’s competence is subject to, among other, the divestment of the insolvency estate imposed with the opening of proceedings. Therefore, for instance, after the declaration of insolvency, the Meeting continues for instance to have exclusive competence to amend the bylaws. This is in line with the EU legislator, at least as regards the authority of the shareholders meeting to decide on a share capital increase or a reduction of the subscribed share capital\(^\text{192}\). Therefore, the ordinary legislator is not at a position to assign this power to the Syndic or the insolvency court\(^\text{193}\). On the contrary, the Meeting does not retain the power to appoint auditors, as this will interfere with the auditing responsibilities of the Syndic\(^\text{194}\).

All Meeting’s decisions which are [...] contrary to the law or the bylaws, are null and void\(^\text{195}\) (see also A14). A decision contrary to the provisions of the IC will fall within the scope of this provision. The nullity may be invoked by any person having legal interest, Syndic included, within the deadline of one year as of the time the relevant minutes are submitted to the competent authority or, in the event the decision is subjected to publication requirements, the time that such decision is entered in the relevant Registry\(^\text{196}\). The court may also consider the


\(^{194}\) In article 16 (3), IC, the code expressly provides that the debtor’s business books form part of the insolvency estate. Also, part of the Syndic’s duties is to examine the business books and other information and to invite the debtor to acknowledge their contents, to verify their condition, to provide any useful information and to be present at the closing of the books (article 7 (1), IC). See also Marinos M, The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 561.

\(^{195}\) See article 35b(1) CL 2190/190 and also Marinos M, The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 561.

\(^{196}\) Article 35b(4), CL 2190/1920.
nullity of the Meeting’s decision *ex officio*, again within the said deadline. Nevertheless, if the nullity is not invoked or considered by the Court within the prescribed time, the decisions is then considered valid and the nullity is cured\(^{197}\). Such “cure” is both *ex tunc* and *erga omnes*\(^{198}\). However, the law provides an exception to this when the decision amends the bylaws, resulting in a company’s object that is rendered illegal or contrary to the public order\(^{199}\). The same also applies when the decision results in a continues violation of mandatory law provisions. The IC provisions fall within this category and, provided that the decision results in a continues violation of such result it cannot be cured after the lapse of the above prescribed period\(^{200}\).

*Pre-insolvency Rehabilitation*

There is no divestment in the pre-insolvency rehabilitation and the Shareholders Meeting remains in place with its powers and authorities intact.

**30. Does the shareholders’ meeting need to approve the accounts of the distressed/insolvent company?**

**A30:** As already discussed above, company law explicitly provides that the approval of the company’s balance sheet falls under the exclusive competence of the shareholders meeting\(^{201}\). Instead of the term balance sheet of article 34 (1) (c), it is more appropriate to refer to the company’s annual accounts\(^{202}\). According to company law, the company’s annual financial statements include the balance sheet, the income statement, the income appropriation statement and the Notes to the financial statement.

Upon the declaration of insolvency, the Shareholders Meeting continues to have the competence to approve the company’s balance sheet\(^{203}\). It should be noted that this power is very restricted and any such decisions taken by the Meeting will have to be compatible with the purpose of the insolvency and inline with the

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\(^{199}\) Article 35b(4), CL 2190/1920, see also

\(^{200}\) **Marinos M**, The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 561.


\(^{203}\) Article 76 (2), IC.
insolvency divestment, as envisaged in the IC. Nevertheless, the Meeting does not have any authority over the distribution of the profits, etc.

31. Does the shareholders’ meeting have the power to dismiss directors – if directors are still in charge of the insolvent company? Can the shareholders’ meeting request the removal of the insolvency representative? (If there are separate reorganization and liquidation procedures, does this affect the response?)

A31: Under general principles of company law, Directors can be freely recalled at any time. This power rests with the Shareholders Meeting (see also below on the dismissal of BoD members appointed by shareholders) and is not suspended by the opening of the insolvency.

The Shareholders Meeting, whether in its ordinary or in an extraordinary session, and with the same quorum and majority rules applying for the appointment of BoD members, can recall the elected members even without cause. This is usually the case when there is a change in the shareholders majority, when the BoD has not been successful in its duties or when the share price is not satisfactory, for cases of listed companies. The right to recall BoD members is not limited to those members appointed by the shareholders meeting but also extends to the Directors appointed by the Bylaws or the BoD itself.

According to the prevailing view, the dismissal of the Directors by the Meeting also results to the termination of the underlying relationship between the Director and the company (i.e. a mandate, agreement for services etc). The recalled Director cannot claim compensation, except in cases where there was an abusive use of the right to recall such member, but is entitled to request the

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206 Article 19(2), CL 2190/1920.
208 Athens CA 117/83.
212 Athens CA 2332/78, Supreme Court 907/1998.
remaining remuneration for the remaining duration of the Directors agreement with the company213.

The Shareholders Meeting can also decide on the appointment of new Directors or even replace the recalled members214. Nevertheless, the Syndic’s consent is required when there is a provision for such BoD members to receive remuneration, given that this will burden the insolvency estate215.

As regards BoD members appointed by shareholders under article 18 (3) (see A12 above), these can be removed at any time by those having the right to appoint them and the Court216. The remaining shareholders also have the right to recall the Director(s) appointed by a shareholder only for cause217. To do so, the shareholders representing 1/10 of the paid up share capital must file a petition to the Court of the company’s seat, requesting to recall the appointed BoD member for cause218.

As far as the insolvency representative (the Syndic under domestic law219) is concerned, article 79 provides that the Syndic can be replaced by the insolvency Court at any time but only for cause. The Court considers such grounds for the replacement upon the request of the rapporteur220 who acts either ex officio or upon the request of a creditor or the creditors’ committee or the debtor. If the rapporteur does not submit to the insolvency court a request for the replacement of the syndic within eight (8) days, those who asked the rapporteur to initiate the process can directly submit the application to the insolvency court221.

216 Article 18(4), CL 2190/1920.
217 Article 18(4), CL 2190/1920.
220 The insolvency rapporteur is one of the insolvency organs (together with the insolvency court, the Syndic, the creditors meeting and the creditor’s committee with a duty to supervise and expedite the operations of the insolvency, order all emergency measures for safeguarding the insolvency estate, presides over the meeting of creditors etc., see articles 58-62, IC.
221 Perakis E, Insolvency law, 2010, NB, p., 123.
32. Is a shareholders’ meeting authorisation required to start an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

A32: The decision for filing a voluntary insolvency petition is made by the legal entity’s representative organ\(^{222}\), meaning the Board of Directors or any person to whom the BoD has assigned the representation of the company, like the CEO for instance\(^{223}\). Therefore, in terms of legal standing such filing is valid without the need to have a resolution of the Shareholders Meeting on the matter. Nevertheless, in terms of company law, filing for insolvency under set grounds, without the corresponding decision of the Shareholders Meeting can be problematic.

Specifically, the debtor is declared insolvent on two grounds: cessation of payments or threatened inability to fulfil obligations\(^{224}\). When the grounds for the declaration of insolvency is the debtor’s cessation of payments, the debtor has an express and unbendable obligation to file for insolvency within 30 days as of the time of the cessation\(^{225}\). However, the same obligation does not apply when the company detects a threatened inability to fulfil its obligations. In these cases, the debtor does not have an obligation to file but a right to do so. The exercise of such option can lead to inception of insolvency proceedings, which could well mean the dissolution of the company and its liquidation\(^{226}\). In such cases it is reasonable to require a Meeting decision on the filing, given the potential impact that this would have on the interest and capacity of the shareholders\(^{227}\).

For the position on reorganisation proceedings see A33 below.

33. Does the shareholders’ meeting need to approve an insolvency or reorganization plan? Can shareholders, even individually, challenge an insolvency or reorganization plan?

A33: For the position on filing for insolvency, see A32 above.

\(^{222}\) See article 96 (2), IC and \textit{Perakis E}, Insolvency law, 2010, NB, p., 91.
\(^{223}\) See article 22 (3) CL 2190/1920 and \textit{Rokas A}, DEE 6/2008, p., 678. This was also the position under erstwhile legislation, where the BoD would file the debtor’s “\textit{declaration on the cessation of payments}” (see articles 525-528 Commercial Law, Royal Decree 19 April 1835) without the need for a resolution of the shareholders’ meeting, see \textit{Rokas K}, Insolvency Law, 12th ed, p., 65.
\(^{224}\) See A4.
\(^{225}\) Article 5 (2), IC.
As regards reorganisation, a distinction should be made between plans proposed by the debtor or the Syndic. In more detail, the IC provides that apart from the debtor, the Syndic also has the right to file a reorganisation plan\textsuperscript{228}.

As regards the debtor, the proposed reorganisation plan is filed by the Board of Directors\textsuperscript{229} and, technically, a decision of the Shareholders Meeting is not a requirement \textit{per se}. However, the approval of the SM is necessary when the draft plan provides for corporate structural changes\textsuperscript{230} (i.e. a merger, demerger, conversion etc). The decisions for such company changes fall within the exclusive competence of the SM\textsuperscript{231} and the IC does not contain any provisions to revoke such powers. Therefore, when the debtor proposed plan is conditional upon such company organisational reforms, then the corresponding consent of the shareholders meeting is necessary\textsuperscript{232}. The Court can either make the ratification of the plan conditional upon such resolution or approve the plan under the suspensive condition that the corresponding decision will be made within a reasonable period of time\textsuperscript{233}.

As already mentioned, the Syndic also has the right to file a plan when the debtor does not do so within the prescribed time\textsuperscript{234}. Under the Greek insolvency code, it is necessary that the debtor consents to the Syndic proposed plan, before any voting on same begins\textsuperscript{235}. Nevertheless, the IC provides two exceptions to this rule. First, under article 120 (2), the debtor is presumed to consent to the Syndic proposed reorganisation plan when the debtor has not raised any objections to the plan by the time of voting. Second, article 120 (3) provides that the debtor’s consent is not necessary when: a) the plan is not expected to make the legal position of the debtor worse than it would have been without the plan and b) when no creditor is getting under the plan more than 100 cents on the dollar\textsuperscript{236}.

\textsuperscript{228} Article 108 (1) IC. The debtor is entitled to submit a reorganisation plan together with the insolvency petition or within a time period of four (4) months from the date the insolvency was declared (with a possible extension of no more than 3 months). If the debtor does not file a plan, the syndic, within three months after the lapse of the said period, is entitled to submit a reorganization plan, see article 18 (2) & (3) IC.

\textsuperscript{229} See article 96 (2), IC and \textit{Kotsiris L}, Insolvency Law, 2011, Sakkoulas, p., 613.

\textsuperscript{230} \textit{Marinos M}, The reorganization plan under the IC [...] Comments on the interrelationship of insolvency and company law, Chronicles of Private Law I/2010, p., 9.

\textsuperscript{231} Article 34(1)(d), CL 2190/1920.

\textsuperscript{232} Article 123, IC.

\textsuperscript{233} Article 123 (2) (a)-(b), IC.

\textsuperscript{234}See article 108 (1), IC, which expressly provides that the syndic has a right and not an obligation to file a reorganisation plan.

\textsuperscript{235} Article 120, IC.

\textsuperscript{236} Article 120, 3 IC, on cram down see also \textit{Kotsiris L}, Insolvency Law, 2011, Sakkoulas, p., 639.
However, it is important to note that article 120 only provides for the consent of the debtor to a Syndic proposed reorganisation plan. The competent company organ to grant such consent is the Board of Directors. Therefore, the approval of the Shareholders Meeting will still be necessary when the Syndic proposed plan provides for company changes of a structural nature\textsuperscript{237}.

In any case, it should be noted that when a debtor company is declared insolvent, this results in the dissolution of such company\textsuperscript{238}. Even if the reorganisation plan is voted and ratified by the Court, this does not automatically revive the company. The decision to revive the company falls within the exclusive competence of the Shareholders Meeting. Therefore, a decision of the Meeting for such revival to take place would be required.

\textit{Rehabilitation}

Apart from the Chapter 7 reorganisation proceedings, the IC also provides for a pre-insolvency rescue procedure where a rehabilitation plan is agreed between the debtor and its creditors and is ratified by the Court\textsuperscript{239}. The rehabilitation application is filed by the Board of Directors\textsuperscript{240}. It is also suggested that, because the rehabilitation proceedings do not result in the dissolution of the company, the approval of the Shareholders Meeting is not a necessary precondition\textsuperscript{241}. Nevertheless, there are cases where the resolution of the Shareholders Meeting is required for the fulfilment of certain conditions of the rehabilitation agreement (for instance, a debt capitalisation, amendment of bylaws etc). The relevant decision is either taken before the rehabilitation agreement is executed by the debtor or is made a condition precedent for the agreement to enter into force\textsuperscript{242}. However, if one or more shareholders state that they will not attend the relevant meeting or that they will not vote in favour of the corresponding decision, the insolvency court, upon the request of the debtor or creditor, can appoint a special representative, to exercise the right to attend and vote instead of those shareholders. This is provided that the Court considers such refusal to be abusive\textsuperscript{243}.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{237} Marinos M, The reorganization plan under the IC […] Comments on the interrelationship of insolvency and company law, Chronicles of Private Law I/2010, p., 9.
\item \textsuperscript{238} Article 96 (1) IC.
\item \textsuperscript{239} See chapter 6, IC on rehabilitation proceedings.
\item \textsuperscript{240} Article 96 (1) IC, see also Rokas A, Pre-insolvency rehabilitation procedure for companies, 2014, Sakkoulas, p., 117 and fn 174.
\item \textsuperscript{242} Article 106c (1), IC.
\item \textsuperscript{243} Article 106c (1), IC.
\end{itemize}
\end{footnotesize}
The IC provides an insight as to what constitutes an abusive refusal and states that a shareholder is particularly deemed to refuse abusively, especially if the Court considers that without the conclusion of a rehabilitation agreement, the debtor is expected to become insolvent and that in case of the debtor’s liquidation proceedings, the shareholders will not take part in the outcome of liquidation.\textsuperscript{244}

Finally, shareholders are considered third parties to the insolvency procedure. They are not required to vote in favour. Individual shareholders may not participate in a share deal.

34. **Is a shareholders’ meeting decision required to issue new shares of the company undergoing insolvency proceeding? Can a new share issue be decided by the board? Can a new share issue be decided by the insolvency representative?**\textsuperscript{245} If a capital increase has to take place through the conversion of claims into new shares, does this affect the response?

**A34:** The issuance of new shares requires a share capital increase.\textsuperscript{246} A decision of the Shareholders Meeting is necessary for such share capital increase.\textsuperscript{247} The BoD can too decide a new share issue. The bylaws may provide that during the first five years following the incorporation of the company, the BoD has the right to increase the share capital in part or in full with the issue of new shares by an amount not greater than the initial capital.\textsuperscript{248} The same power, again for five years, may be granted to the BoD through a decision of the SM, again for the issuance of new shares by an amount not greater than the initial capital.\textsuperscript{249} It should be noted that the power of the SM to proceed to the issuance of new shares must be provided in the company bylaws.\textsuperscript{250}

The power to decide on the issuance of new shares cannot be assigned to the Syndic or the insolvency court, given that this would be against articles 25 and 30 of the Second Council Directive 77/91/EEC.\textsuperscript{251}

\textsuperscript{244} Article 106c (1), IC.
\textsuperscript{245} These questions are aimed at understanding whether the fact that the company is subject to insolvency proceedings allows or causes deviations from the company law rules determining the body competent to take decisions on the issue of new shares of the company, and/or from the company law rules establishing the criteria and purposes with which such decisions must comply.
\textsuperscript{246} Article 13 Cl 2190/1920. Or
\textsuperscript{248} See articles 34 (2) and 13 (1) CL 2190/1920.
\textsuperscript{249} The five year period can be extended by five years each time, see 13(1c) CL 2190/1920.
\textsuperscript{250} See articles 34 (2) and 13 (1) CL 2190/1920.
\textsuperscript{252} Marinos M, The société anonyme between company, insolvency and the capital markets law, (Marinos ed), Sakkoulas, 2011, p., 560.
When the capital increase takes place through the conversion of claims, the position generally remains the same.\footnote{Passias, ND, 1968, p., 301, see also contra Triantafillakis G. The law of sociétés anonymes, Vol., I, 2010, (Perakis ed), NB (Nomiki Bibliothiki), p., 746, suggesting that only the SM can decide this on the basis of the importance that this decision has for the interests of the shareholders.}

35. Can an insolvency/reorganization plan affect the structure of the corporate entity (e.g., by merger, spin-off, or change of the legal form)? Is a shareholders’ meeting authorization required for this?

A35: Yes, the reorganisation/rehabilitation plan can provide for changes that affect the structure of the corporate entity.\footnote{See articles 109(1)b and 123 (2) IC.} The IC makes specific reference to the possible conversion, merger or revival of the debtor.\footnote{Article 123 (2) IC.} The approval of the Shareholders Meeting is necessary when the draft plan provides for such corporate structural changes, see A32.

36. On what conditions can the company carry on business during an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?) Is a shareholders’ meeting authorisation required?

A36: Either at the time of the declaration of insolvency, or at a subsequent time, anyone having legal interest\footnote{The debtor, creditors or third parties may make such request to the court, see Spyridakis I, Insolvency law, Sakkoulas, 2008, p., 295.} may request the insolvency court to allow the continuation (on a temporarily basis) of the business activities of the debtor.\footnote{Article 78 IC. The IC contains provisions to facilitate the carry on of the business, for example employment contracts are not automatically rescinded upon the declaration of the insolvency (article 34 IC) and pending bilateral agreements continue to be in force, unless expressly provided in the law or the contract (articles 28-31 IC), see Perakis E, Insolvency law, 2010, NB, p., 313.} The business could be carried on either by the debtor himself or by the Syndic. However, before the Court grants the request, it must be convinced that carrying on the business would serve the interests of creditors and such permission will be given only to the extent that is necessary to maintain the intangible value of the business. This means that it is not necessary to prove that creditors would benefit from this.\footnote{Perakis E, Insolvency law, 2010, NB, p., 313.} Showing that their interests are not infringed by carrying on the business, will suffice.\footnote{Spyridakis I, Insolvency law, Sakkoulas, 2008, p., 295.}

As already said, even if the Court authorises such request, this would only be temporary until the creditors meeting have a vote to decide the manner in which...
the operation of the insolvency will continue\textsuperscript{260}. The creditors meeting is called to decide whether the Syndic will carry on the commercial activity of the debtor’s business or continue with some sectors of the business for a time, whether the business must be leased or sold to a third person as a whole or liquidation of its assets is the preferred route\textsuperscript{261}. The relevant decision is taken by a double majority of all creditors and their claims, regardless of how many are present. In making their decision, the creditors have the benefit of a report prepared by the Syndic on the financial position of the debtor and the causes of the insolvency, the prospects of preserving the business, in whole or in part, its potential viability and the possibility of the debtor’s entering a reorganization plan and the applicable projected consequences as regards the satisfaction of creditors\textsuperscript{262}. The decision of the creditors meeting applies mandatorily without the need for any prior revocation or amendment of the Court’s decision \textit{vis a vis} carrying on the business above\textsuperscript{263}.

A shareholders meeting authorisation on the above is not provided for under the IC.

\textbf{37. In the course of an insolvency procedure, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business operation of the company? Is a shareholders’ meeting authorisation required? (If there are separate reorganization and liquidation procedures, does this affect the response?)}

\textbf{A37:} As a general rule, the IC provides that until a reorganization plan is approved or the insolvency reaches the stage of the union of creditors\textsuperscript{264}, there can be no disposal of business assets without the court rapporteur’s permission. However, the IC provides for circumstances (described below) on which assets can be disposed contrary to the above rule.

For example, if there are exceptional circumstances (i.e. an apparent danger of a substantial reduction in the value of the debtor’s business or the existence of a particularly favourable offer), the insolvency Court may authorise the sale of the business as a whole.

\textsuperscript{260} Alternatively, until the time the insolvency is terminated by a ratification of a reorganization plan etc., see Psichomanis S. Insolvency law, 4th ed., 2011, p., 411.
\textsuperscript{261} Article 84 (1) IC.
\textsuperscript{262} Article 70 IC.
\textsuperscript{263} Article 78 (2) IC.
\textsuperscript{264} Under article 133 IC, “After the completion of the verification of credits and so long as there has been achieved no acceptance or ratification of a reorganization plan of the debtor’s business or such plan has been annulled for any reason, the insolvency is at the stage of the union of creditors”. 
At the same time, the decision declaring the insolvency also provides for the sealing of assets comprising the insolvency estate. However, the code provides that the Syndic can request the court rapporteur to exclude from the sealing all assets that are subject to immediate wear or depreciation in value or whose maintenance is costly. These are delivered to the Syndic for sale. The sale is made with open bids and serves under the approval of the court rapporteur, who will not allow for the sale to be concluded if the price is not beneficial or he considers that the assets could get a higher price at a subsequent bidding process.

Furthermore, the Syndic can also dispose merchandise and movable assets to meet the current needs of the insolvency procedure. The sale of the business as a whole is not precluded. However, there are certain requirements to this. First, the inventory process recording the assets of the insolvency estate must have been completed. Second, the Syndic must obtain the permission of the court rapporteur and finally, the sale can only go through if the carrying on of the business or its sale as a whole could not be achieved. The debtor and the creditors committee can raise their objections. The sale is made with open bids as above.

Assets can also be disposed when the company carries on its business to the extend necessary for the business activities. A special permission of the Court is not required every time a sale takes place, as this is covered by the decision and of the court allowing the carrying on of the business.

It should be noted that the insolvency court may still prohibit the sale of any assets until the acceptance or rejection of a reorganisation plan, despite the above exceptional circumstances.

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265 See article 11 also Psychomanis S. Insolvency law, 4th ed., 2011, p., 397 suggesting that even when the decision declaring the insolvency does not expressly provide for the sealing of the insolvency estate that this should take place in any case, given the importance that the sealing has in protecting the insolvency estate, see also article 59 (1) IC. The syndic, within three (3) days as of his appointment, request the unsealing of the estate and makes an inventory, see article 68 (1) IC. It goes without saying that when an inventory can be made prior to the sealing then the sealing and unsealing of the state will not be necessary, see Psychomanis, p., 397.

266 Article 67 (1) IC.


268 Article 77 (1) IC.


272 Upon the request of the debtor or the Syndic, see article 114 (4) IC.

273 See Mihalopoulos G, ComLR, 2009, p., 754. See also article 26 on the rights of secured creditors, which, in the same spirit, provides that secured creditors’ measures of forced execution over the debtor’s assets that are connected operatively and directly with the debtor’s activities or with the production unit etc, are stayed until
After all claims are verified and if a reorganisation plan is not ratified (or not filed) or was annulled for any reason, the Syndic can then proceed with the liquidation of the estate, either by the sale of the business as a whole or with liquidation of separate assets\textsuperscript{274}. The sale of the business as a whole enjoys generous tax exemptions and fee reductions\textsuperscript{275}.

Whether the business will be sold as a whole or the Syndic will liquidate the assets separately is decided by the creditors committee, which rules on how to proceed with the insolvency\textsuperscript{276}. However, the rule is that the assets are liquidated separately, because the sale of the business as a whole requires an express decision of the creditors committee, which is then ratified by the court rapporteur and must not be successfully challenged before the insolvency court\textsuperscript{277}. Unless all the conditions above are satisfied, the sale of a business as a whole may not take place and the Syndic will liquidate the estate piece by piece\textsuperscript{278}. Given that the debtor is divested of the estate upon the declaration of the insolvency, company organs have no role in matters dealing with the insolvency property. Therefore, the shareholders meeting authorisation for the liquidation of the estate is not required.

The same applies not only in cases where the assets comprising the estate is sold separately but also in the sale of the entire business operation of the company. Under article 142 (2) IC, with the transfer of the business (or under article 145 of its separate operational unit) the administrative licenses of any nature connected to the operation of the business and of the transferred assets are also transferred \textit{ipso jure} to the highest bidder. Therefore, any form of consent of the SM would be unnecessary\textsuperscript{279}.

**38. Does the shareholders' meeting have any power in relation to a decision of the board or the insolvency representative to continue or reject any favourable, unfavourable or essential contract during an insolvency procedure? (If there are**
separate reorganization and liquidation procedures, does this affect the response?).

A38: The Shareholders Meeting has no power regarding the continuation or rejection of executory contracts in insolvency. The general rule is that executory contacts remain in force after the declaration of the insolvency, unless expressly provided in the code. Under the IC, only the Syndic (with the leave of the court rapporteur) has the right to perform or to reject executory contracts.

39. If an insolvency plan can be presented for a whole corporate group, must that plan be approved by the shareholders’ meetings of each company of the group, including of those that are balance-sheet insolvent? How are the different meetings’ decisions coordinated? Are there specific safeguards (e.g., any veto power or other remedy) for the minority shareholders of the companies that are not insolvent?

A39: The insolvency of a group as a whole is not possible in Greece, given that the Greek insolvency law follows the principle “one legal entity, one estate, one insolvency.” Separate insolvency proceedings for each company of the group that satisfies the criteria of the IC will be required.

40. If companies belonging to the same group file separate insolvency proceedings, are there specific requirements/mechanisms to provide for coordination of those proceedings? Are shareholders’ meetings of the relevant companies involved in the coordination mechanisms, if any?

A40: The IC does not contain provisions on the coordination of separate insolvency proceedings of companies belonging to the same group. Even where all insolvencies are opened before the same Court, the IC does not expressly provide for the possibility to consolidate all the said proceedings, although this could in theory be achieved through the provisions of Civil Procedure Code on the unification of pending trials (article 246 GrCPC).

Furthermore, the substantive consolidation of the group’s assets is also not possible under Greek law, given that it stumbles upon the provisions of the IC.

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280 Described as current contracts in the IC, meaning contracts where, at the time of the declaration of insolvency, the obligations of each contracting party have not been (fully) performed, see also Psichomanis S. Insolvency law, 4th ed., 2011, p., 285.

281 Article 28 IC and A24. See also Psichomanis, p., 287 for the termination of agreements on the grounds of good faith (Article 281 Greek Civil Code) or on the basis of an express contractual clause.

282 Article 29 (1) IC.

283 See article 2 IC, combined with the fact that a group of companies is not a recognized legal entity under Greek law, see also Varela M, DEE 4/2009, p., 403.


285 Varela M, ibid p., 409.

286 Articles 16 and 2 IC.
and is directly breaches the principle of the equality of creditors of each debtor company as well as the legal independence of each member of the group\textsuperscript{287}. The appointment of one Syndic for all the insolvencies is also not covered by the IC. However, the provisions of the code on the required independence of the Syndic do not \textit{a priori} exclude the possibility of a common appointment\textsuperscript{288}. Saying that, the fact that the Syndic is selected from a list kept with the competent Court and is not freely nominated by the insolvency actors could be problematic\textsuperscript{289} (not the case for rehabilitation and special liquidation).

The conclusion of protocols as a means of cooperation between the various Syndics in the separate insolvencies of the companies in the group are too not provided in the code but are equally not precluded, as long as these do not create binding obligations for the Syndics and do not harm the interests of creditors\textsuperscript{290}.

\textbf{IV. OTHER OBSTACLES FOR INSOLVENCY PROCEDURES FOUND IN COMPANY LAW}

41. Please list any other legal provision in company law that, in your opinion or in your experience, may interfere with the insolvency procedure of a company in your jurisdiction.

\textbf{A41:} The Greek legal order does not contain provisions to establish and command the institution of Insolvency Practitioners (IPs). The administration and liquidation of insolvency estates is entrusted to the “Syndic”, a lawyer with at least five years service, appointed on the conditions set out in the Greek Insolvency Code (IC)\textsuperscript{291}. The role of Syndics is at the core of Greek insolvency proceedings, with recent amendments entrusting them with further responsibilities\textsuperscript{292}. Despite the attempts of the IC to facilitate the appointment of experts in complex cases, the \textit{modus operandi} and efficiency of proceedings will benefit from a regulated profession of insolvency practitioners with specialised knowledge in law, economics etc\textsuperscript{293}. At the same time, there is also room for improvement on the transparency for the appointment of Syndics, including the need for the right of debtors and creditors to freely propose to the court IPs for appointment\textsuperscript{294}. However, an expected amendment of the insolvency code will reportedly allow non-lawyers to also act as Syndics.

\textsuperscript{287} Varela M, \textit{ibid} p., 410.
\textsuperscript{288} Varela M, \textit{ibid} p., 411.
\textsuperscript{289} Article 63 (1) IC.
\textsuperscript{290} Varela M, \textit{ibid} p., 411.
\textsuperscript{291} Bazinas G, Sakkas Y, \textit{All you need to know about becoming an Insolvency Practitioner in Greece INSOL Europe}, \texttt{http://www.insol-europe.org/technical-content/how-to-become-an-insolvency-practitioner-across-europe/how-to-become-an-ip-in-greece/}
\textsuperscript{292} \textit{Ibid}.
\textsuperscript{293} \textit{Ibid}.
\textsuperscript{294} \textit{Ibid}. 