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*A New Approach to Privatisation: An Unexplored Option for Greece
in Privatising Troubled State-Owned Enterprises*

By

Steven T. Kargman

Kargman Associates

New York

Stathis Potamitis

Potamitsvekris

Athens

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A New Approach to Privatisation: An Unexplored Option for Greece in Privatising Troubled State-Owned Enterprises

Steven T. Kargman, President, Kargman Associates, New York, USA and **Stathis Potamitis**, Managing Partner, PotamitisVekris, Athens, Greece

As we write this in early November 2011, Greece's financial and economic future hangs in the balance while its government is in the process of undergoing a major reshuffling. Yet, despite all of the variables and uncertainties in Greece's near and medium-term future – e.g., whether the bailouts for Greece will continue, whether Greece will be able to achieve a major restructuring of its outstanding debt burden, and even whether Greece will remain a member of the eurozone – Greece will unquestionably face some truly monumental challenges in the coming years

Crucially, if Greece is ever to come to grips with its fundamental economic weaknesses, one issue that it will need to address head-on during the coming period is settling on a sound and comprehensive approach for privatising its state-owned enterprises (SOEs). These SOEs constitute a large part of the Greek economy and yet represent a major impediment to Greece's ability to become a more competitive and efficient economy. The privatisation of Greek government-owned enterprises and assets has been identified by Greece's official creditors and by the Greek government itself as a potentially large source of revenues in the next few years.

Nonetheless, we seriously question whether the approach that to date has been pursued by the Greek government in pending privatisations will contribute to the much-needed overhaul of the Greek economy or generate the ambitious revenue targets expected from privatisation sale proceeds. Instead, we believe that Greece should adopt an innovative and novel approach to privatisation that has been overlooked and could potentially offer great benefits to Greece.

Specifically, in our view, Greece needs to meld its privatisation strategy with well-tested approaches and techniques from the world of insolvency and restructuring. In particular, we believe that Greece's troubled state-owned enterprises (SOEs) – of which there are all too many in Greece and which represent a substantial and continuing drain on the Greek treasury – could benefit greatly from the rigours and remedial effects of the insolvency and restructuring process. We believe that the current approach for pending privatisations whereby enterprises are to be privatised without first

undergoing a restructuring is not a sensible or sound strategy and should be dropped by the government.

Under our proposal, those troubled Greek SOEs that have businesses worthy of rescue should either be restructured through a formal court reorganisation process or, where there is sufficient consensus among the relevant stakeholders, potentially through an out-of-court restructuring. Those troubled SOEs that are beyond rescue and show no signs of future economic viability should be subject without delay to an orderly court-supervised liquidation.

SOEs that are designated as suitable candidates for reorganisation or restructuring would likely then become more attractive candidates for privatisation in the eyes of potential investors. Many of the problems which had previously plagued such Greek SOEs – whether it is a heavy debt burden, unwieldy labour/pension obligations, or structural and operational inefficiencies – could be addressed through the process of restructuring and reorganisation as happens on a regular basis in the world of commercial restructurings and reorganisations.

Of course, as in the commercial context, some issues will be easier to resolve and less contentious than others. And in the specific context of restructuring SOEs, some issues, such as how to transition displaced employees and how to provide such employees with proper skills retraining to the extent necessary, will need to be approached with great attention and sensitivity to the needs and interests of the various stakeholders.

Restructuring troubled enterprises as a precursor to an ultimate privatisation could yield several positive effects. In the first place, it will help stanch the substantial outflow of funds from the Greek treasury that have been used to prop up troubled SOEs. Moreover, the process of decline and disintegration that afflicts many of these troubled SOEs could be reversed. The restructured enterprises and their employees might enjoy a new sense of purpose and direction, and these enterprises could then be in a position to contribute to the strength and productivity of the Greek economy as well as become net contributors of tax revenue to the Greek government.

Furthermore, in any subsequent privatisation of the restructured enterprise, the government might reasonably expect to receive greater sale proceeds from the privatisation than would be the case if the privatisation was not preceded by such a restructuring. The government would be offering for sale to private investors a 'cleaner' and healthier company, both from an operational and financial standpoint. By pursuing this course of action, the government might also avoid the spectre of 'fire sales' of enterprises and assets for prices much less than their fair value.

Conversely, the privatisation approach currently being pursued by the Greek government could lead to further dysfunction and inefficiency among the newly privatised entities as well as impose further burdens on the government. An example of this was the privatisation a few years ago of Hellenic Shipyards, the largest Greek shipbuilders, where ownership was shifted to private hands but there was no prior restructuring of the enterprise. Not surprisingly, the privatised entity in this case cannot stand on its own in the market but instead remains dependent on government contracts for its continued viability, thus making the benefits of this privatisation somewhat illusory.

Fortunately, Greece now has two new arrows in its quiver should it decide to pursue our proposed strategy of restructuring followed by privatisation. First, Greece has established a new coordinating agency to oversee the privatisation process which if it works as intended could play a pivotal role in enabling and expediting future privatisations. Second, in recent months, the Greek parliament has passed important insolvency law reforms that if properly implemented should lead to a more robust and streamlined reorganisation process.

In particular, Greece has introduced a new pre-insolvency proceeding, known as Recovery, which allows the debtor and the majority of its creditors to seek ratification of a restructuring agreement and bind a non-consenting minority of creditors. Moreover, the new proceeding allows the court to ratify a 'prepack' sale of all or part of the business. Overall, these new tools offer many more restructuring options to the debtor and its creditors than had been previously available under Greek law.

Given the scope and magnitude of its financial and economic crisis, Greece is entering relatively uncharted territory. Greece will need to take bold and innovative steps to restructure enterprises experiencing distress now and in the future, and in doing so, it might be well advised to consider adopting an array of 'extraordinary restructuring solutions'¹ that go beyond traditional approaches to restructuring and insolvency. Our proposal for privatisation preceded by restructuring may be just one of the 'extraordinary restructuring solutions' that will be necessary to set Greece's economy back on the right course.

In sum, while obviously privatisation alone will not be a panacea for the Greek economy or the state of its public finances, a privatisation program properly executed may nonetheless offer many significant benefits to the Greek economy. The key is that privatisation must first be preceded by the successful restructuring of the troubled SOEs, and such restructuring of the SOEs should draw on the myriad valuable approaches and tools used by practitioners worldwide to unlock value trapped in distressed enterprises.

Notes

- 1 For a further discussion of 'extraordinary restructuring solutions', see Steven T. Kargman, 'Developing Extraordinary Restructuring Solutions to Address the Fallout in the Real Economy from the Global Financial Crisis: An Overview of a Project of the International Insolvency Institute,' *International Corporate Rescue*, Volume 6, Issue No. 5 (September 2009), pp. 267-69, and Steven T. Kargman, 'Developing Extraordinary Restructuring Solutions in Response to the Global Financial Crisis: An Overview of a Project of the International Insolvency Institute,' *Norton Annual Review of International Insolvency*, Spring 2010, pp. 164-187 (including contributions by Richard Gitlin, Stephen Gray/Marko Mitrovic, Dr. Luis Manuel C. Mejan, and Dr. Shinjiro Takagi).

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