The Insolvency Review

Ninth Edition

Editor
Donald S Bernstein

The Law Reviews

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Ninth Edition

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Donald S Bernstein

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PREFACE

As with prior editions of *The Insolvency Review*, this ninth edition includes in-depth information regarding current market conditions and insolvency case developments in a number of countries. Because of the ongoing covid-19 pandemic, we owe more than the usual debt of gratitude to the outstanding professionals around the globe who annually dedicate their time and talents to this book. Their contributions reflect the diversity of their respective national commercial cultures and laws, and, for the past two years, the disparate impact of covid-19 around the world.

I had hoped that by this time we would have greater visibility into the impact of the pandemic on national economies, but while we know more today than we did last year and have vaccines that seem to be effective against the viral variants to date, countries have faced repeated setbacks due to the evolution of the virus, limited access to vaccines in some places and resistance to vaccination and mitigation measures in others. As a result, the adverse impact of the pandemic on the health and livelihoods of so many around the world continues.

This adverse impact has of course been blunted by fiscal stimulus, payment moratoria and the temporary suspension of director liability for ongoing trading in a number of countries, and insolvency activity in many countries has consequently been lower than expected. However, as time goes on the financial stresses temporarily suppressed by economic relief measures continue to build, and concern grows over what will happen when relief measures expire. This has led to repeated extensions of relief measures in a number of countries despite the recognition that these measures cannot remain in place forever.

It seems senseless for there to be mass evictions of residential and business tenants and the failure of numerous businesses – especially small and medium-sized businesses that were viable before the pandemic – when temporary relief measures expire. The question is whether there is a way to mitigate the longer term economic impact of the pandemic so tenants and businesses can survive the crisis and be restored to financial health, thereby preserving their income-generating capacity and jobs. Some have suggested that solutions like permanent relief from pandemic-related rent arrears and the creation of 'emergency restructuring entities' to facilitate business restructurings and channel public and private funds to viable businesses should be considered.

The economic costs of the pandemic will have to be borne by consumers, investors, employees or taxpayers. The policy question is whether these costs can be minimised and made more sufferable by creating mechanisms that spread their absorption in a more orderly and equitable way.

As I do each year, I want to thank the contributors to this book for their efforts to make *The Insolvency Review* a valuable resource. As each of our authors knows, this book is a challenging undertaking every year, and is particularly so during the pandemic. We have far

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less visibility into what is really going on in the global economy and where things are headed. Nevertheless, my hope is that this year's volume will help all of us, authors and readers alike, reflect on the larger picture, keep our eye on likely, as well as necessary, developments and point to better ways to address the adverse financial impact of the current crisis.

Donald S Bernstein
Davis Polk & Wardwell LLP
New York, USA
September 2021

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Chapter 10

GREECE

Athanasia G Tsene[1]

I INSOLVENCY LAW, POLICY AND PROCEDURE

i Statutory framework and substantive law

Greek legislation and regulation pertaining to insolvency

The Bankruptcy Code was enacted by Law 3588/2007 (effective as of 10 July 2007), replacing older provisions on insolvency (both in connection with winding up and rehabilitation), and was subsequently amended several times, including by Laws 3858/2010, 4013/2011, 4336/2015, 4446/2016, 4472/2017, 4491/2017 and 4512/2018. The Bankruptcy Code applied only to business undertakings, which includes sole traders, partnerships, companies and unincorporated legal entities pursuing an economic purpose.

In parallel with the Bankruptcy Code, Law 4307/2014, enacted in 2014, regulated certain pre-insolvency proceedings available for: (1) the settlement of debts of small businesses and professionals, in each case arising from business loans; and (2) the extraordinary debt settlement and special administration of businesses qualifying as merchants under the Bankruptcy Code.

In addition, Law 4469/2017, enacted in 2017, regulated out-of-court workouts available to debtors who are individuals or legal entities capable of being declared bankrupt, had revenues from business activities and were tax resident in Greece, provided that their financial indebtedness, tax indebtedness or other indebtedness to public law legal entities met the criteria provided for in that law. Given the criteria of application of Law 4307/2014 and Law 4469/2017, the procedures thereby available were more likely to be relevant to small businesses.

Separate proceedings were available for over-indebted debtors being individuals (consumers or professionals, but not being capable of being declared bankrupt under the Bankruptcy Code). In particular, Law 3869/2010 (as repeatedly amended) applied to the partial discharge and restructuring of indebtedness arising from non-business bank loans and credit and (for applications submitted until 28 February 2019) was also available for the exemption from liquidation of the debtor's primary residence, subject to certain criteria being met, while (commencing from 30 April 2019) Law 4605/2019 applied to any indebtedness secured by mortgage or pre-notation of mortgage over a property located in Greece used

1 Athanasia G Tsene is a partner at Bernitsas Law. Special thanks to Maria Krika and Sildia Fotopoulou, junior associates at Bernitsas law, for their contribution in collecting and analysing useful legal material and for reviewing and commenting on an advanced version of this chapter.

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by the debtor as the debtor's primary residence, provided that the debtor was an individual (whether capable of being declared bankrupt under the Bankruptcy Code or not) and further provided that certain criteria would be met.

The above fragmentation of the Greek legal framework pertaining to insolvency proved to be inefficient. It did not provide for adequate measures and procedures intended to operate as a warning that could address over-indebtedness in a timely fashion and prevent insolvency, for both businesses and individual debtors. At the same time, where insolvency had already occurred, despite the legislative changes that were in the right direction, there remained provisions that could create legal uncertainties, while the procedures that had to be followed resulted in delays in reaching an effective restructuring, rehabilitation or liquidation (as appropriate in each case).

Law 4738/2020 (the Insolvency Code) was passed in October 2020, replacing the above laws with effect from 1 March 2021 (for businesses), 1 June 2021 (for individuals) and 27 October 2020 or 1 July 2021 (as the case may be, in respect of certain provisions of the Insolvency Code), in order to rectify deficiencies of the previously applicable provisions, by introducing a comprehensive legal framework partly intended to prevent insolvency and partly intended to address actual or forthcoming insolvency, for all categories of debtors (businesses, independent professionals and households).

The Insolvency Code has introduced an electronic platform operated by the Special Secretariat for Private Debt Management intended to give debtors (at their request) an early alert of insolvency risk and has provided for a set of procedures and the allocation of resources for the provision of advisory services to debtors in connection with their debts and the management of their budget.

The Insolvency Code has also introduced an Electronic Solvency Register, available for the publication of summaries of applications and court judgments on insolvency proceedings, in order to ensure that creditors will have timely access to information on such proceedings. The Electronic Solvency Register is also available to debtors (whether individuals or small businesses) intending to achieve a final settlement of their debts through the liquidation of their assets and partial payments out of their annual income (following deduction of reasonable living expenses), in order for those debtors to be given a second chance for access to the financial system. The Insolvency Code also includes provisions on vulnerable debtors and, subject to certain conditions being met, the sale and lease back of primary residence, as well as provisions regulating insolvency administrators (including with respect to the necessary qualifications, duties, responsibilities and disciplinary measures).

With respect to businesses, the Insolvency Code has retained the procedure for the out-of-court settlement of debts through the electronic platform operated by the Special Secretariat for the Management of Private Debt, as well as the rehabilitation agreement and bankruptcy proceedings, all of which were available under the replaced legal framework, but under the Insolvency Code are regulated in a manner that is expected to address remaining legal uncertainties and to ensure efficiency of the proceedings. Further, the scope of application of the provisions of the Insolvency Code on the out-of-court restructuring of debts and bankruptcy extends to all debtors (and not only those qualifying as merchants).

The Insolvency Code further includes provisions facilitating, subject to certain conditions being met, the active participation of the state and social security funds in out-of-court restructurings and rehabilitation agreements (in connection with claims for taxes

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and duties or social security contributions), provisions in connection with disposals and liquidations effected in accordance with the Insolvency Code and provisions enabling the issue of secondary legislation for the implementation and application of the Insolvency Code.

The transitional provisions of the Insolvency Code are relevant to insolvency proceedings commenced before its entry into force. This chapter focuses on proceedings available under the Insolvency Code to debtors being businesses and commenced after 1 March 2021. No analysis is included in this chapter on proceedings commenced before 1 March 2021 in respect of debtors being businesses,[2] or in respect of any proceedings commenced before or after 1 June 2021in respect of debtors being individuals.

Other laws continue to specifically regulate the winding up and reorganisation of certain regulated entities (such as credit and financial institutions and insurance companies, as briefly discussed in Section I.vi).

Distributional priorities

Articles 975–978 of the Code of Civil Procedure include specific provisions on the priority of claims of creditors and distinguish between (1) claims with a general privilege, which applies by operation of law and concerns, among others, claims on account of valued added tax and other taxes, claims of public law entities, claims of employees and social security funds, (2) claims with a special privilege, which include those of secured creditors, and (3) unsecured claims.

The distinction between claims with a general privilege, claims with a special privilege and unsecured claims is critical in the context of distribution of the proceeds of liquidation of the assets over which security has been created. Claims with a general or special privilege are satisfied in priority over unsecured claims.

Under Article 977 of the Greek Code of Civil Procedure, if there are only claims with a general privilege and claims with a special privilege, the former may only be satisfied up to one-third of the proceeds of liquidation of the bankruptcy estate. If there are claims of all three categories, those with a general privilege are satisfied up to 25 per cent, those with a special privilege are satisfied up to 65 per cent and unsecured claims are satisfied up to 10 per cent of the proceeds of liquidation of the bankruptcy estate. If there are no claims with a special privilege, those with a general privilege are satisfied up to 70 per cent and unsecured claims are satisfied up to 30 per cent of the proceeds of liquidation of the bankruptcy estate. If there are only claims with a special privilege and unsecured claims, those with a special privilege are satisfied up to 90 per cent and unsecured claims are satisfied up to 10 per cent of the proceeds of liquidation of the bankruptcy estate.

Article 167 of the Insolvency Code provides that, subject to certain criteria being met, claims from credit facilities to finance the continuation or preservation of the debtor's business (including for the provision of goods or services to the debtor) or claims of suppliers of goods or services for the debtor's business, in each case in accordance with the rehabilitation agreement or during the period of negotiations (for up to six months) with a view to reaching a rehabilitation agreement, are first ranking claims with general privilege (point (1) above) and their full repayment is a prerequisite to the allocation of any proceeds to other claims pursuant to Article 977 of the Greek Code of Civil Procedure.

2 An analysis on insolvency proceedings commenced before 1 March 2021 for debtors being businesses is available in the Greek chapter of eighth (2020) edition of *The Insolvency Review*.

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The opening of insolvency proceedings does not affect the priority ranking of validly created security (claims of point (2) above) and secured creditors (as opposed to unsecured creditors) can initiate individual enforcement proceedings for their secured claim during a period of nine months after the declaration of bankruptcy in respect of the debtor (provided that, depending on the type and stage of the insolvency proceedings, a stay may be imposed in accordance with the Insolvency Code). Secured claims can be satisfied also out of the proceeds of liquidation of the insolvency estate, but only to the extent that the proceeds of liquidation of the relevant security assets are not sufficient for the full repayment of their secured claims.

Vulnerable transactions

Vulnerability of transactions is determined by reference to the date of cessation of payments, which is set by the bankruptcy court in its judgment declaring bankruptcy in respect of an insolvent debtor in accordance with the Insolvency Code. 'Cessation of payments' means the evidenced general and permanent inability of a debtor to pay its debts as they fall due. The date of cessation of payments so set by the court cannot fall earlier than two years prior to the date of the issue of the judgment declaring bankruptcy.

Under Article 117 of the Insolvency Code, certain acts carried out by the debtor during the suspect period (i.e., the period commencing on the date of cessation of payments and ending on the date of the declaration of bankruptcy by the court) are subject to compulsory rescission by the bankruptcy officer. These acts include:

a any acts of the insolvent debtor carried out without consideration being received in return and that have the effect of reducing the value of the debtor's estate and any undervalue transactions entered into by the debtor (other than disposals made out of a moral or legal duty or as necessary to sustain the debtor's children, provided that in each case such disposals were in proportion to and did not deteriorate the debtor's financial condition);

b any payment of debts that are not yet due and payable;

c any repayment of due and payable debts not made by payment in cash or in the pre-agreed manner (other than voluntary transfers of properties to credit or financial institutions in or towards repayment of due and payable debts); and

d any security interest created over the debtor's assets to secure a pre-existing debt whereby the debtor had not pre-agreed to grant such a security interest, or to secure a new debt replacing a pre-existing debt (but subject to the protection accorded to security interests in favour of banks pursuant to Legislative Decree 17.7./13.8.1923).

In addition, under Article 118 of the Insolvency Code, certain acts carried out by the debtor during the suspect period, which are not subject to compulsory rescission, as above, may be subject to rescission by the bankruptcy officer. Acts subject to challenge in this manner include:

a any payment of debts that are due and payable, and

b any transaction entered into by the debtor for consideration.

This applies in each case if the relevant party or creditor (as the case may be) was aware of the cessation of payments and that such payment or transaction is detrimental to the other creditors. For these purposes, deemed knowledge of that party or creditor applies in respect

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of a spouse, close relative, founder, administrator, director, or manager of the debtor or, where that party or creditor is an affiliate of the debtor within the meaning of Article 32 of Law 4308/2014, if the terms of the transaction manifestly deviate from normal market terms.

Exceptionally, certain transactions may be vulnerable even if concluded earlier than the set date of cessation of payments. Under Article 119 of the Insolvency Code, acts of the debtor concluded within the five years immediately prior to the declaration of bankruptcy are subject to rescission, if the debtor intended the act to operate to the detriment of its creditors in general or to benefit certain creditors to the detriment of other creditors, and the relevant party was, at the time of the act, aware of the debtor's intention.

Protection against rescission in certain circumstances

Article 120 of the Insolvency Code further provides for protection against rescission in respect of:

a acts falling within the scope of the debtor's business or of professional activities that are concluded in ordinary circumstances and in the ordinary course of the debtor's trade;

b acts of the debtor expressly excluded by law from the scope of application of the provisions on rescission during the suspect period (these include mortgages, pre-notations of mortgage and pledges created in favour of banks to secure credit and loan agreements or existing obligations);

c disposals made by the debtor against payment of consideration for equal value;

d transactions that were reasonably and directly necessary for the negotiations with a view to reaching a rehabilitation agreement (including the payment of fees and costs for the negotiation, approval or ratification of a rehabilitation agreement or for the fees and costs for professional advisors for these purposes); and

e transactions entered into for the implementation of an out-of-court settlement or of a rehabilitation agreement, in each case in accordance with the relevant sections of the Insolvency Code.

Further protection may be available under Article 121 of the Insolvency Code (in addition to the protection accorded by other laws transposing into Greek law EU Directives on settlement and payment systems and financial collateral), which provides that:

a in relation to a settlement made or security provided in connection with a transaction in securities on an exchange, the rules regulating that exchange will determine whether such a settlement or provision of security is valid or subject to rescission;

b the provisions that apply to a financial collateral arrangement determine whether the relevant financial collateral arrangement is valid or whether it is subject to rescission; and

c the rules regulating a payment or settlement system or a money market determine whether set-off rights exercised in connection with relevant payments or transactions have been validly exercised or are subject to rescission.

ii Policy

With respect to the treatment of businesses in financial difficulties, the tendency (on the part of both creditors and debtors) is to make efforts to keep failing businesses operating.

Partly because of the several amendments of the Bankruptcy Code, as a result of which there was no sufficient market or court precedent to provide safe guidance to all parties concerned, partly because of inefficiencies of the Greek court system and partly because of the lack of specialised insolvency practitioners, the rehabilitation provisions of the Bankruptcy

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Code had often been used by debtors as a means of delaying creditors and not in a genuine effort to rehabilitate their failing businesses. The latest amendments of the Bankruptcy Code (in 2017 and 2018) introduced material changes in the provisions regulating the rehabilitation agreement, which were in the right direction but have not yet been sufficiently tested in practice.

Because of the above, creditors (especially banks) have so far tended to prefer to consider out-of-court restructuring arrangements with debtors in financial difficulties well before an actual need to commence any insolvency proceedings. These restructuring arrangements mostly concern the restructuring of existing financial indebtedness and may also provide for new funding (whether by existing lenders or shareholders or new investors) or business restructuring measures.

The newly enacted Insolvency Code is intended to address inefficiencies and uncertainties under the previously applicable legal framework and is also intended to facilitate liquidation of businesses that have no prospects of rehabilitation.

iii Insolvency procedures

Under the Insolvency Code, as amended by the new provisions and the latest amendments, the following pre-insolvency and insolvency proceedings are available for debtors being businesses, in each case meeting the criteria of the Insolvency Code:

a out-of-court mechanism with a view to reaching a restructuring agreement (Articles 5–30), available for relatively small debts to credit or financial institutions, the state and social security funds, provided that certain criteria are met, through an electronic platform operated by the Special Secretariat for the Management of Private Debt;

b pre-bankruptcy rehabilitation agreement (Articles 31–64) and in-bankruptcy rehabilitation agreement (Article 74) entered into between a debtor and its creditors and then submitted to the court for ratification, where there is evidence of the actual or foreseeable inability of the debtor to pay its debts as they fall due;

c bankruptcy (Articles 75–196) and simplified bankruptcy in respect of debtors qualifying as very small entities pursuant to Article 2 of Law 4308/2014 (Articles 172–188).

Under the Insolvency Code, out-of-court restructuring agreements are intended to address over-indebtedness towards credit or financial institutions or indebtedness for taxes and duties, while rehabilitation agreements (whether pre-bankruptcy or in-bankruptcy) are aimed at the rehabilitation of the debtor's business.

Pursuant to Article 75 of the Insolvency Code, bankruptcy is aimed at the collective satisfaction of creditors's claims through the liquidation of the bankruptcy estate of the debtor as a whole or of groups of assets or individual assets of the bankruptcy estate, so that those assets are redirected without undue delay to a potentially productive use. Commencing from 1 March 2021, bankruptcy is the only liquidation and collective enforcement proceeding for insolvent debtors. The provisions of the Insolvency Code have addressed several substantive and procedural issues that, under the previously applicable legal framework, caused substantial delays and legal uncertainties.

The provisions of EU Regulation (EC) No. 1346/2000 (the Insolvency Regulation) and EU Regulation (EU) 2015/848 (the Recast Insolvency Regulation) and of the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency of 1997 (the UNCITRAL Model Law) are relevant to ancillary proceedings in Greece.

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Under the Recast Insolvency Regulation, all the above proceedings are available in Greece for insolvent debtors having their centre of main interests (within the meaning of the Insolvency Regulation) in Greece. Bankruptcy proceedings, simplified bankruptcy proceedings and rehabilitation agreement proceedings are main proceedings for the purposes of the Recast Insolvency Regulation. The out-of-court mechanism with a view to reaching a restructuring of debts is not included in Annex A, while two proceedings listed in Annex A of the Recast Insolvency Regulation (special liquidation and restructuring plan) are no longer available.

Where main proceedings have been initiated in another EU country in respect of a debtor having its centre of main interests in that other EU country, ancillary proceedings are available in Greece under the Insolvency Code if that debtor has an establishment in Greece (within the meaning of 'establishment' under the Insolvency Regulation). Very limited court precedent is currently publicly available on ancillary proceedings in Greece in connection with an establishment in Greece of a debtor having its centre of main interests in another EU country.

The UNCITRAL Model Law, which applies to non-EU states, was ratified by Law 3858/2010 and may prove very helpful for the purposes of recognition by the Greek courts of insolvency proceedings commenced in another jurisdiction, with a view to protecting assets of the insolvency estate located in Greece.

iv Starting proceedings

Out-of-court mechanism with a view to reaching a restructuring agreement

This procedure[3] is available through the electronic platform operated by the Special Secretariat for the Management of Private Debt, for debts to credit or financial institutions (including securitisation special purpose companies and servicing companies appointed as servicers), the state or social security funds, or both, and is initiated on application of the debtor or any of the above qualifying creditors.

The procedure is not available if at least 90 per cent of the total amount of debts to creditors of the above categories is due to one of those creditors, or if the total amount of such debts does not exceed €10,000. Furthermore, the procedure is not available if the debtor is already subject to insolvency proceedings or has been placed into liquidation, or if the debtor has sought protection in the context of other proceedings and has not withdrawn from such proceedings, or if the debtor (or, in respect of a debtor being a legal entity, its administrators, directors or managers) have been found guilty of fraud, tax evasion, money laundering, bribery, forgery, embezzlement, smuggling or fraudulent bankruptcy.

The procedure is not available also where the debtor does not fully disclose the assets and liabilities (including bank accounts and liabilities for taxes and duties) of the debtor and the debtor's spouse and dependants (if the debtor is an individual) and detailed financial and tax information (if the debtor is a legal entity), or where there are only performing debts towards the above qualifying creditors and the debtor does not invoke specific events and circumstances resulting in the deterioration of the debtor's financial condition by at least 20 per cent, whether due to a reduction of revenues or an increase of expenses. The information so submitted by the debtor is shared with all creditors participating in the procedure and, in the event that the information is untrue, incomplete or misleading, the

3 Articles 5–30 of the Insolvency Code.

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debtor is excluded from the procedure and, if a restructuring agreement was achieved with reliance by the creditors on such information, each creditor is entitled to terminate the restructuring agreement and commence or resume enforcement against the debtor for the full amount of its claim together with interest at an annual rate being the aggregate of the ECB rate and 5 percentage points.

Submission of an application meeting the above criteria suspends any enforcement proceedings against the debtor. It also suspends the procedures of the Code of Conduct of the Bank of Greece on loans in arrears; if no restructuring is achieved further to the application, the procedures of the Code of Conduct must resume on application of the debtor or the relevant credit or financial institution, which must be submitted within 30 days of the termination of the out-of-court restructuring procedure. If no such application is submitted, the procedures of the Code of Conduct are terminated.

Creditors that are credit or financial institutions are entitled, but not obliged, to submit a proposal for the restructuring of the debts falling within the scope of this procedure. If this proposal is accepted by the debtor with the consent of the majority of the participating creditors that are credit or financial institutions (60 per cent of the relevant claims, including at least 40 per cent of any secured claims), the agreement for the restructuring of the debts is concluded through the platform.

Provided that the criteria set by Articles 21 and 22 of the Insolvency Code (which include, among others, a no worse-off requirement as compared to recoveries in the event of insolvency of the debtor), the state and the social security funds as creditors will consent to the restructuring agreement and will be deemed to consent if they do not notify any objection or a request for rectification within 15 days of them being notified of the restructuring agreement. For these purposes, consenting creditors that are credit or financial institutions are deemed to accept (for the benefit of the state and social security funds as creditors) that the restructuring will enable the viability of the debtor's business or prevent the debtor's insolvency.

Within 10 days of receipt of a restructuring proposal submitted by a creditor that is a credit or financial institution, the debtor is entitled to request the appointment of a mediator. If no restructuring agreement is reached within 30 days of the request, the procedure is terminated.

From the date of submission of the application until termination of the out-of-court restructuring procedure, all enforcement proceedings against the debtor are stayed. If a restructuring agreement is successfully concluded as above, no creditor bound by the restructuring agreement is permitted to commence or continue any enforcement proceedings against the debtor in connection with the restructured debts, subject to compliance by the debtor with the terms of the restructuring agreement. If the debtor does not comply with the payment obligations under the restructuring agreement and, as a result the amount in arrears exceeds the aggregate amount of three instalments or 3 per cent of the aggregate debt, any creditor may terminate the restructuring agreement as far as that creditor's claims are concerned.

If no restructuring agreement is concluded within two months of the date of submission of the application for the opening of the procedure, the procedure is terminated, subject only to an extension of 15 days if the state or a social security fund has submitted a request for rectification pursuant to Article 21 of the Insolvency Code.

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Rehabilitation agreement

The rehabilitation procedure[4] is a pre-bankruptcy collective procedure intended to preserve, restructure and rehabilitate the debtor's business through the ratification of a rehabilitation agreement, provided that the rehabilitation agreement meets the no worse-off test for the creditors as compared to the rights and recoveries of each creditor in the event of the debtor's insolvency.

The application to the court for ratification of a rehabilitation agreement concluded between the debtor and more than 50 per cent of the secured claims and more than 50 per cent of the other claims is submitted by a debtor carrying on a business activity and having the centre of its main interests in Greece, if there is evidence of an actual or foreseeable financial inability on the part of the debtor to pay its debts as they fall due in a general manner, or evidence that there is a likelihood that the debtor will become insolvent unless rehabilitated. The competent court is the Multi-Member Court of First Instance of the place where the debtor has the centre of its main interests.

Creditors representing the above percentages of secured claims and other claims may also apply for the ratification of a rehabilitation agreement concluded between the creditors only and without the consent of the debtor if, at the time the rehabilitation agreement was concluded between the creditors, the debtor had already ceased payments.

Article 34 of the Insolvency Code requires submission of evidence that the above percentages have been reached, in the form of a statement of all creditors' claims (privileged, secured and unsecured and whether already due and payable or not, but excluding contingent claims or claims being subject to the supply of goods or services) that must be attached to the rehabilitation agreement, as at a date not being earlier than three months prior to the date of submission of the application to the court for ratification of the rehabilitation agreement. The above statement of the creditors' claims must be prepared based on the most recent published financial statements of the debtor, the books and records of the debtor and the books and records of the creditors, court judgments adjudicating claims against the debtor and interim court judgments in connection with claims against the debtor.

Pursuant to Article 54 of the Insolvency Code, if any of the above percentages of claims is not reached, the court may ratify a rehabilitation agreement, whereupon it will be binding on all creditors, provided that at least the following criteria are met:

a the rehabilitation agreement has been concluded by creditors representing at least 60 per cent of all creditors' claims and more than 50 per cent of the secured creditors' claims;

b non-consenting creditors' claims are treated more favourably than other creditors' claims that that would be of lower ranking in the event of liquidation in bankruptcy;

c no category of creditors is entitled to receive any value in excess of the total amount of its respective claims; and

d if the debtor is a very small entity (in accordance with the criteria of Law 4308/2014), the rehabilitation agreement was proposed by the debtor or was concluded with the consent of the debtor.

Under Article 74 of the Insolvency Court, the court may also sustain the debtor's application if it assesses that the debtor is already in cessation of payments, provided that the debtor, at the same time, files for bankruptcy and files an expert report.

4 Articles 31–64 of the Insolvency Code.

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The application for ratification of a rehabilitation agreement must include all information required by Article 45 of the Insolvency Code.

When a rehabilitation agreement has been concluded between a debtor and its creditors, the application for ratification of the rehabilitation agreement filed with the court must be supported by the following documents:

a a copy of the signed rehabilitation agreement;
b the latest available financial statements of the debtor;
c the statement of all creditors' claims;[5]
d an expert report, which must be prepared in accordance with Article 48 of the Insolvency Code by an eligible expert (i.e., registered in the register of experts of Article 65 of the Insolvency Code) selected by the debtor and the consenting creditors, include the expert's opinion as to whether the criteria for ratification of the rehabilitation agreement are met, confirm the accuracy and completeness of the statement of all creditors' claims (item (c) above), including with respect to secured claims, and also attach a list of the debtor's assets; and
e a certificate of the debtor's outstanding indebtedness towards the State and social security funds, issued not earlier than one month prior to submission to the court of the application for ratification of the rehabilitation agreement.

If the rehabilitation agreement is concluded only by the debtor's creditors, the creditors must also submit an application for the declaration of bankruptcy in respect of the debtor, as well as the expert report of Article 48 of the Insolvency Code (item (d) above) prepared by an eligible expert appointed by the creditors, while the documents in points (b), (c) and (e) above need to accompany the application for ratification only if they are already available to the creditors; if there are any missing documents, the court may suspend the issue of its judgment and order the debtor to provide them to the appointed expert within one month of the order of the court. On the expiry of that period, the creditors may apply for a new hearing date to be set by the court, not later than two months from that application.

The period required for the successful completion of a ratification agreement and its ratification by the court depends on both the time required for a successful conclusion of the negotiations between the debtor and its creditors (which depends on the number, type and class of creditors, the amount of their claims and any resulting difficulty in achieving the required majority of creditors) and the time required for the ratification of the rehabilitation agreement (in respect of which the Insolvency Code sets deadlines for the setting of hearing dates and the issue of judgments).

The hearing of the application for the ratification of the rehabilitation agreement is set no later than two months after filing. If the debtor is not a contracting party to the agreement, the debtor must be notified at least 20 days prior to the hearing. The court may also order notification of one or more creditors within a set period before the hearing. Furthermore, a summary of the application must be published in the Bulletin of Judicial Publications within five days of the submission of the application to the court.

There are no particular restrictions on what may be included in a rehabilitation agreement, other than that the agreement cannot be against the law. Matters commonly covered may include:

5 Required by Article 34 of the Insolvency Code.

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a the amendment of the financial terms of the creditors' claims (such as changes with respect to the due dates or the interest rate, the replacement of interest payments with payments out of future profits, or a change in the ranking order of existing security interests), including claims of the state and claims of social security funds;
b the conversion of debt into equity whether by the issue of new shares or by the issue of convertible bonds;
c inter-creditor arrangements whether by reference to the status of the creditors as creditors or by reference to their status as shareholders following conversion of debt into equity, including, without limitation, designation of new or different classes of senior and subordinated debt;
d the reduction of the amount of the creditors' claims, on account of principal or interest;
e the sale of assets of the debtor;
f the assignment of the administration of the debtor's business to a third party;
g the transfer of the business or part of the business of the debtor to a third party or to a company established by the creditors;
h the stay of individual creditor enforcement following ratification of the agreement for a specified period, such stay not being binding on dissenting creditors beyond three months after ratification of the agreement;
i the provision of bridge financing or new financing for the preservation of the value of the business throughout the rehabilitation procedure or for the implementation of the business plan following rehabilitation;
j the appointment of a person who will monitor compliance with the terms of the rehabilitation agreement, with the powers and duties provided for in the rehabilitation agreement;
k additional payments that must be made if the debtor's financial condition improves; and
l in respect of debt converted into equity, the replacement of guarantees, credit insurances or similar agreements with put options in favour of the affected creditor for the sale to the relevant guarantor, insurer or other relevant party of the instruments resulting from the conversion of debt into equity, for a period up to two months after the date on which the debt would be due and payable had it not been converted into equity and, if the debt was already due and payable at conversion, for a period up to two months after conversion.

Claims secured by financial collateral are not affected to the extent they can be satisfied out of the financial collateral, unless otherwise agreed by the relevant secured creditors. The claims restructured by a rehabilitation agreement may include contingent claims (including claims from guarantees).

Article 37 of the Insolvency Code provides that the state and social security funds may consent to a rehabilitation agreement, even if the consent entails a waiver of rights or privileges, provided that the no-worse off criteria are met for their claims, and further provides for the deemed consent by the state and social security funds if certain additional criteria are met.

The rehabilitation agreement may also include termination provisions and may also provide that a breach of its terms operates as a resolutory condition cancelling the rehabilitation agreement. It may also include conditions precedent with respect to all or any

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of its terms, in which case there must be a longstop date within which any such condition precedent must be satisfied, not extending beyond nine months from the date of ratification of the rehabilitation agreement by the court.

The rehabilitation agreement is entered into as a private agreement unless the obligations contemplated therein require the parties to enter into a notarial deed.

Article 35 of the Insolvency Code provides that, if the debtor is a legal entity, its board of directors or its administrator is exclusively competent to consent to a rehabilitation agreement and that, where anything in the rehabilitation agreement would be within the competence of the general meeting of shareholders or of the partners of the debtor, no approval by the general meeting of shareholders or of the partners will be required if the expert report concludes that no residual claims of the shareholders or partners are affected by the rehabilitation agreement, except only if approval is expressly and specifically required by law. Pursuant to Article 35 of the Insolvency Code, if the approval of the general meeting of shareholders or of the partners of the insolvent debtor would exceptionally be required for the implementation of the rehabilitation agreement, the court will appoint a special representative authorised to convene the general meeting of shareholders or the partners and to exercise the voting rights of non-cooperative shareholders or partners, to efficiently enable the debtor and the creditors to implement the rehabilitation agreement.

The court will ratify a rehabilitation agreement duly approved by the creditors if the following criteria are cumulatively met:

a it is likely that the debtor will remain viable following the ratification of the rehabilitation agreement;

b the rehabilitation agreement is not likely to be detrimental to creditors' collective recoveries;

c the rehabilitation agreement is not the result of malicious, wrongful or unlawful acts of the debtor, any creditor or third party, including acts committed in breach of antitrust laws;

d the rehabilitation agreement treats creditors of the same class equally, provided that deviations from the equal treatment principle may be permitted for a serious business or social reason explained in detail in the court judgment, or where the affected creditors have consented to unequal treatment; and

e where the ratification of a rehabilitation agreement is requested by the creditors, the debtor is deemed to consent if it has not notified the court that it objects until the hearing of the creditors' application, provided that objection by the debtor does not prevent ratification if, based on the expert report accompanying the application for ratification, the rehabilitation agreement will not put the debtor in a worse legal or financial position than its legal or financial position without the rehabilitation agreement.

If it is likely that the ratification of the rehabilitation agreement will not reverse any actual cessation of payments, the court will not ratify the rehabilitation agreement. If no application for the declaration of bankruptcy is pending but there is evidence of cessation of payments, the court will reject the application for ratification and will communicate its judgment to the competent attorney general of the court (who is entitled to submit an application for declaration of bankruptcy of the debtor).

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If any documents or information required for the assessment of the application for ratification have not been submitted to the court, the court is entitled to reject the application or to set a time period (not exceeding 20 days) for the submission of the missing documents or information or for the amendment of the rehabilitation agreement.

The debtor, the creditors (as parties to the rehabilitation agreement) and a representative of any employees have a right to be heard at the ratification hearing. Any party having a legitimate interest may also join in the proceedings without any prior formalities. The court's judgment ratifying the rehabilitation agreement is only subject to third-party opposition, a remedy available to persons who are not parties to the proceedings. The court's judgment denying ratification is subject to appeal by a party to the proceedings. The court judgment ratifying or denying ratification of a rehabilitation agreement must be published, without undue delay, with the General Commercial Registry and Electronic Solvency Register, on application of the debtor or any creditor.

Once ratified by the court, the rehabilitation agreement becomes fully binding on the debtor and on all creditors whose claims are dealt with in the rehabilitation agreement, including those who did not agree to it, with respect to claims that came into existence before the date of issue of the ratification judgement. Creditors' claims against co-debtors or guarantors are limited for the same amount as the claims against the debtor, provided that the relevant creditor has expressly consented to this limitation.

Bankruptcy

Under the Insolvency Code, bankruptcy proceedings commence by a declaration of the court on the application of any creditor, the debtor or the attorney general, if the debtor has ceased payments in the sense that it is generally and permanently unable to pay its debts as they fall due. In respect of simplified bankruptcy proceedings, cessation of payments is deemed to have occurred if the debtor does not effect payment of due and payable debts towards the state, the social security funds or credit or financial institutions for an amount at least equal to 60 per cent of the total amount of the debtor's due and payable debts for a period of at least six months, and the non-performing debt or debts exceed in aggregate the amount of €30,000.

The competent court is the Multi-Member Court of First Instance (or the magistrates' court in respect of debtors being very small entities) of the place where the debtor has the centre of its main interests or (in respect of an individual with no business activity) of the place of the debtor's primary residence (in each case, the bankruptcy court).

Where the application is submitted by the debtor, it must be accompanied by the debtor's most recent published financial statements and, if the debtor is an individual or an entity not publishing financial statements, by the debtor's most recent income tax return, tax statement on real properties and, if applicable, tax statement on revenue from business or professional activity. The debtor's application must also be accompanied by a statement in respect of all creditors' claims and a certificate issued by the tax authority on the debtor's indebtedness towards the state, as well as any further document supporting the debtor's financial condition.

The debtor is obliged to file for bankruptcy within 30 days of the date on which it became generally and permanently unable to repay its debts. The application and its supporting documents are published on the Electronic Solvency Register, and any party with a legitimate interest may have access to the application and its supporting documents.

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Where the debtor is a business undertaking (other than a very small entity) and the application is submitted by one or more creditors representing at least 30 per cent of all creditors' claims, including at least 20 per cent of the secured claims, it may also include a request for the liquidation of all assets of the debtor as a whole, or of selected operational groups of assets of the debtor. If the application submitted by one or more creditors does not include such a request, any creditor or creditors representing at least 30 per cent of all creditors' claims (excluding claims of the debtor's affiliates) and including at least 20 per cent of the secured claims may join the proceedings and submit such a request. Evidence that the above percentages have been reached must be provided in the form of a statement prepared by a certified accountant or auditor on the basis of the debtor's most recent published financial statements and the debtor's books and records.

The application for the declaration of bankruptcy must also designate an eligible person (registered with the Registry of Insolvency Practitioners) having accepted to be appointed by the court as the bankruptcy officer in respect of the debtor. This requirement does not apply if the application is submitted by the debtor, and it is stated in the application that no eligible person was prepared to accept being appointed as the bankruptcy officer.

The bankruptcy court will reject a bankruptcy application if it is not submitted in accordance with the requirements of the Insolvency Code. The bankruptcy court will also reject a bankruptcy application submitted by a creditor as a substitute for individual enforcement, or for purposes that are inconsistent with the purposes of bankruptcy as a collective enforcement proceeding for insolvent debtors, or by a debtor seeking to evade repayment of its debts.

A judgment of the bankruptcy court declaring bankruptcy sets the date of cessation of payments, deemed to be the date falling 30 calendar days before submission of the application to the court for the declaration of bankruptcy; if, based on the information made available to the court, cessation of payments is likely to have occurred on an earlier date, the bankruptcy court will set such earlier date as the date of cessation of payments, but not earlier than two years before the declaration of bankruptcy (or, if the debtor has died, not earlier than one year before the debtor's death).

The bankruptcy court also appoints the bankruptcy officer who will be responsible for the administration of the debtor for the purposes of liquidating and distributing the proceeds of liquidation to the creditors, in accordance with their respective rights of priority.

The purpose of bankruptcy is to ensure that the debtor's property is liquidated for the satisfaction of the creditors' claims in accordance with their respective rights of priority. If the bankruptcy court concludes that the liquidation of the debtor's assets as a whole (or the liquidation of selected operational groups of assets of the debtor) is likely to increase recoveries by creditors, the judgment of the bankruptcy court declaring bankruptcy will also provide for liquidation.

A judgment of the bankruptcy court declaring bankruptcy is published in the Electronic Solvency Register and is enforceable from the morning of the date of its publication by the bankruptcy court. However, the bankruptcy declaration may be subject to revocation by the bankruptcy court or appeal before the Court of Appeals or the Supreme Court. The declaration may also be opposed or reinvestigated before the bankruptcy court. The initiation of any of these proceedings does not, of itself, suspend the enforceability of the bankruptcy declaration.

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A judge rapporteur (i.e., a judge of the bankruptcy court) is also appointed to supervise the procedure and submit reports when required; the bankruptcy officer will seek the prior approval of the judge rapporteur in relation to various actions during the performance of his or her duties.

During the bankruptcy procedure, creditors can give notice of their claims to the court and the bankruptcy officer. The latter is assisted by the meeting of creditors, and also monitors the proceedings. Decisions of the meeting of creditors are required for various matters (including in respect of the continuation of the operation of the business, if considered necessary to preserve the value of the assets).

If, at any stage, it is determined that there is no cash available to finance the bankruptcy proceedings, the court may issue a judgment ordering the cessation of the proceedings. In any case, bankruptcy proceedings will lapse on the fifth anniversary of the date of declaration of bankruptcy, unless any opposition proceedings are pending for the final distribution of the proceeds of liquidation of the bankruptcy estate, in which case the bankruptcy court may extend the term of the bankruptcy proceedings until the issue of a non-appealable judgment on the pending opposition proceedings.

Debtors (whether individuals or legal entities) may be discharged towards their creditors in respect of debts that were not satisfied from the proceeds of liquidation of the bankruptcy estate in accordance with the provisions of Articles 192–196 of the Insolvency Code. No discharge can be declared for debts resulting from wilful misconduct or grossly negligent conduct on the part of the debtor.

v Control of insolvency proceedings

All insolvency proceedings under the Insolvency Code are opened, continued and concluded in accordance with the provisions of the Insolvency Code and, with the exception of the out-of-court mechanism for the restructuring of debts, in accordance with judgments and orders issued by the competent court or under the supervision of the competent court, or both.

Creditors can commence bankruptcy proceedings, reach a rehabilitation agreement between creditors and submit it to the court for ratification, and commence liquidation proceedings. They can also participate in the proceedings by lodging their claims, supporting (or opposing) various steps of the proceedings (where permitted under the Insolvency Code, depending on the type of the proceedings), and in meetings of creditors; specific majority percentages are required by reference to the type and stage of the proceedings under the Insolvency Code. Creditors are also entitled to apply for temporary measures intended to preserve the business or the assets of the insolvent debtor (or to oppose any such measures applied for by the debtor, other creditors or other parties, as the case may be) in accordance with the provisions of the Insolvency Code.

Specific duties are provided for under the Insolvency Code for the members of the board of directors. Failure to file (or delay in filing) for bankruptcy upon cessation of payments exposes the directors to personal liability. The same applies if bankruptcy results from gross negligence or wilful misconduct of the directors, while the directors are further exposed to criminal liability in the event of loss-making or extraordinarily risky transactions, inappropriate borrowings, misleading or incomplete company books and records, failure to prepare and approve financial statements or inventories as required by law, undue

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disposals or deterioration of assets, or preferential payments to the detriment of other creditors. Furthermore, the directors have personal and criminal liability in the event of tax indebtedness, in accordance with tax legislation.

vi Special regimes

Banks, broker dealers, insurance companies and other regulated financial institutions are excluded from the general insolvency regime of the Insolvency Code. Specific provisions apply with respect to their reorganisation and winding up; these provisions transpose into Greek law the relevant EU Directives.

Law 4261/2014 (as amended and in force) transposes into Greek law EU Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and includes specific provisions on the prudential supervision, reorganisation and special liquidation of credit and financial institutions and investment firms, under the supervision of the competent financial supervision authority.

Law 4335/2015 transposes into Greek law EU Directive 2014/59/EU on recovery and resolution of credit institutions and investment firms (the Banks Recovery and Resolution Directive (BRRD)).

The implementation of the BRRD by virtue of Law 4335/2015 has been material for the purposes of the recapitalisation of the Greek banks in 2015 and will provide the authorities with a credible set of tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical financial and economic functions, while minimising the impact of an institution's failure on the economy and financial system. In particular, four resolution tools and powers (sale of business, bridge institution, asset separation and bail-in) will be immediately available (except that the general bail-in resolution tool did not apply before 1 January 2016) and may be used alone or in combination when the relevant resolution authority considers that:

a an institution is failing or likely to fail;

b there is no reasonable prospect that any alternative private sector measures would prevent the failure of such an institution within a reasonable amount of time; and

c a resolution action is in the public interest.

Further, Law 4364/2016 (transposing into Greek law EU Directive 2009/138/EC on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II)) includes specific provisions in connection with the rehabilitation and winding up of insurance and reinsurance companies.

No special insolvency rules apply to corporate groups outside the regulated financial sector.

vii Cross-border issues

The Insolvency Regulation, the Recast Insolvency Regulation and the ratified UNCITRAL Model Law are relevant (within their respective scopes of application) to territorial jurisdiction and cross-border insolvency requiring main proceedings in Greece and secondary proceedings outside Greece, or vice versa.

Law 3458/2006 transposes into Greek law EU Directive 2001/24/EC on the reorganisation and winding up of credit institutions with respect to relevant cross-border issues and Law 4335/2015 transposes into Greek law the BRRD.

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There is limited Greek court precedent concerning cross-border insolvency cases and none of that court precedent deals with matters that could be regarded as controversial in the context of the domestic legislation or of the aforementioned provisions that are relevant to cross-border insolvency.

There is market precedent to suggest that in the case of large corporates with activities in different jurisdictions, various structures have been used or considered (involving the change of place of registered office outside Greece or cross-border corporate transformations) with a view to enabling the debtor and its creditors to achieve restructuring under foreign law, primarily to ensure successful completion within a shorter period and also to protect against uncertainties resulting from the enactment and subsequent repeated amendments of the previously applicable Bankruptcy Code. The introduction of the Insolvency Code is an important step in the right direction and is expected to prove helpful for the purposes of restructuring, including of large or medium corporates.

II INSOLVENCY METRICS

The Greek economy, in unprecedented times of economic crisis from 2008 to 2013, lost cumulatively 26 per cent of the GDP while, during these years, the Greek state faced considerable pressure regarding its budgetary framework and lost its access to the financial markets. In view of its inability to be financed by the markets, the Hellenic Republic concluded three Economic Adjustment Programmes for the provision of Finance Facility, of which one is with eurozone Member States and the International Monetary Fund in May 2010 and one in March 2012 with the European Financial Stability Fund. Through these programmes, the Hellenic Republic committed itself to adopting structural measures aiming at restoring competitiveness and promoting the economic development of Greece. The result of these measures was the gradual improvement of Greece's budgetary framework and the reversal of the economic conditions as the Greek economy begun to show signs of recovery.

After a short-lived recovery in 2014, the Greek economy in 2015 resumed its recession and the GDP change rate developed in -0.2 per cent. In 2016, the recession was milder than expected in the first half and, during the second half of 2016, the economy presented a positive growth rate. Overall, in 2016, GDP increased by 0.3 per cent at constant 2010 prices. The failure to reach an agreement on the terms of extension of the Second Programme between the Greek government and the European Union, the European Central Bank and the International Monetary Fund (the Institutions), led to the termination of the Second Programme on 30 June 2015, without having accomplished a transition to a new financial assistance programme, capable of ensuring the necessary funding of the Hellenic Republic, in order to meet its external financial obligations. A bank holiday on 28 June 2015 was imposed and subsequently capital controls were introduced. In this context and following further negotiations with the Institutions, the Hellenic Republic agreed with the European Commission and the European Stability Mechanism (ESM) to the provision of stability support by the ESM in the form of a financial assistance facility, accompanied by the Third Programme of economic adjustment, aiming to cover the external financing needs of Greece by mid-2018 and to encourage the return of Greece to a sustainable development path.

The Third Programme was successfully completed in August 2018. In June 2018, an enhanced post-programme surveillance (EPPS) framework adapted to Greece in view of the long-standing crisis and challenges faced was established, under the enhanced surveillance framework according to Regulation (EU) No. 472/2013. The EPPS's main purpose is to

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safeguard financial stability and continued implementation of structural reforms aiming, among other things, to boost domestic growth, create jobs and modernise the public sector. Reviews under the EPPS are conducted quarterly and progress is linked to debt sustainability measures such as income equivalent returns and reduced interest rates. Also in June 2018, certain debt relief measures, namely the medium-term debt-relief measures in respect of Greece's loan received under the Second Programme were announced, including a 10-year maturity extension.

As a result of the implementation of a series of structural reforms, the disbursement of the first set of policy-contingent debt measures of €1 billion was approved in April 2019. A cash buffer of €33.7 billion (as at 31 March 2019) built up by the Greek government out of ESM loan disbursements and other sources in order to facilitate the country's access to the international markets is expected to be sufficient to cover Greece's future gross financial needs for two years or four years if the then current stock of treasury bills is rolled over (up to 2023). The capital controls imposed in July 2015 have been lifted (effective from 1 September 2019).

The Greek government returned to the international markets following completion of the Third Economic Adjustment Programme. In 2019, the Greek government managed to tap the markets with three issues of Greek government bonds (GGBs), including a 10-year GGB (€2.5 billion, 3.9 per cent yield), the first since the beginning of the crisis in 2009, and the reopening of the 10-year bond on 15 October 2019 (€1.5 billion, 1.5 per cent yield).[6] Economic growth continued in 2019, but at a slightly lower pace.

The Greek economy was growing before the covid-19 pandemic but came to a sudden stop because of the lockdown measures that affected the Greek economy, as is the case with all countries that had to take similar restrictive measures, including the other EU member states.[7]

At the Special European Council (17–21 July 2020), in response to the socioeconomic fallout from the covid-19 pandemic, EU leaders agreed a recovery package and the 2021–2027 budget expected to help the EU to rebuild after the pandemic and to support investment in the green and digital transitions. The recovery package of €1,824.3 billion combines the multiannual financial framework (MFF) of €1,074.30 billion and an extraordinary recovery effort under the Next Generation EU (NGEU) instrument for the borrowing by the EU Commission of €750 billion on the markets (to be disbursed to Member States as grants and loans). The plan is intended to support the countries and sectors most affected by the crisis, mostly located in southern and eastern Europe and, therefore, including Greece. Member States need to prepare national recovery and resilience plans for 2021–2023, which must be consistent with the country-specific recommendations and contribute to green and digital transitions; more specifically, the plans are required to boost growth and jobs and reinforce the 'economic and social resilience' of EU countries. The plans will be reviewed in 2022.[8]

Greece's recovery and resilience plan (Greece 2.0) was approved by the EU Commission on 17 June 2021. The EU Commission's assessment finds that Greece 2.0 plan devotes 38 per cent of Greece's total allocation to measures that support climate objectives and 23 per cent to the digital transition (exceeding the minimum required 20 per cent). The Greece 2.0 plan also includes measures that contribute to economic growth and increase employment through the improvement of productivity, and provide for the implementation

6 https://www.pdma.gr/en/.

7 European Economic Forecast of the European Commission (Spring 2020), Overview: A deep and uneven recession, an uncertain recovery. https://ec.europa.eu/info/sites/info/files/economy-finance/ip125_en.pdf.

8 https://www.consilium.europa.eu/en/meetings/european-council/2020/07/17-21/.

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of a comprehensive national public health programme that will support primary, secondary and tertiary prevention and strengthen primary care, making the economy more open, improving public administration and making the judicial system more efficient. In parallel with the substantial increase in public investment, the Greece 2.0 plan makes full use of the Recovery and Resilience Facility loans to provide funding to companies and increase the level of private investment, while it builds on and complements key ongoing structural reforms to improve the broader functioning of the economy, which reforms are currently monitored under the enhanced surveillance framework. On 17 June 2021, the EU Commission adopted a proposal for a Council Implementing Decision to provide €17.8 billion in grants and €12.7 billion in loans to Greece under the Recovery and Resilience Facility.[9]

Approval by the Council will allow for the disbursement of €4 billion to Greece in pre-financing (representing 13 per cent of the total allocated amount for Greece), while the EU Commission will authorise further disbursements based on the satisfactory fulfilment of the milestones and targets outlined in the Council Implementing Decision, reflecting progress on the implementation of the investments and reforms. The recovery and resilience plans of Greece and 11 other European Union member-states received the necessary approval of the EU economy and finance ministers at the ECOFIN meeting of 13 July 2021,[10] opening the way for the payment of the first disbursements to Greece.

Due to the impact of the covid-19 pandemic and the containment measures taken in an effort to curb infections, Greece's economy contracted by 8.2 per cent in 2020 especially during the second and fourth quarters of 2020, mostly because of the importance of the tourism sector and the small size of the majority of enterprises in the economy. However, the impact on total investment was relatively small, as a result of a timely increase in public investments and strong construction activity, which operated with limited restrictions during the lockdown periods. Employment support measures managed to prevent large-scale dismissals, keeping the unemployment rate at 16.3 per cent. The deficit in Greece's headline balance reached 9.7 per cent of GDP in 2020, which can be mainly attributed to the cost of the measures adopted to mitigate the social and economic impact of the crisis (6.3 per cent of GDP), the impact of the pandemic on state revenues, and the change in the statistical recording of the expected cost of clearing the backlog of state guarantees and the healthcare clawbacks. As the economy continues to recover and emergency fiscal measures are gradually phased out, the headline deficit is expected by the EU Commission to decline to 3.2 per cent of GDP in 2022. Following a steep increase in 2020 due to the pandemic, public debt is expected by the EU Commission to slightly increase to around 209 per cent of GDP in 2021 before declining to around 202 per cent in 2022.[11]

The ongoing rollout of the vaccination campaign should allow for a gradual easing of the containment measures that were still in place in the first quarter of 2021, thus contributing to private consumption growth, especially in 2022. The gradual reopening of the tourism sector should support net exports (along with the projected market share gains for Greek exports, a trend interrupted by the pandemic). Economic activity in the second half of 2021 is also expected to be supported by the launch of the implementation of the projects presented in Greece 2.0 recovery and resilience plan. On the assumption that the impact of the pandemic

9 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3022.

10 https://www.europeansources.info/record/economic-and-financial-affairs-council-13-july-2021/.

11 European Economic Forecast of the European Commission (Spring 2021), Overview: Rolling-up sleeves. https://ec.europa.eu/economy_finance/forecasts/2021/spring/ecfin_forecast_spring_2021_el_en.pdf.

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on liquidity and incomes will continue to require job support measures to help maintain the unemployment rate at 16.3 per cent in 2021, to be reduced to 16.1 per cent in 2022, GDP is forecast by the EU Commission to grow by 4.1 per cent in 2021 and 6 per cent in 2022, while overall inflation is likely to remain mildly negative in 2021, largely on account of weak demand for industrial goods and services, before gradually recovering in 2022. There are sources of uncertainty, particularly in relation to the tourism sector and the easing of travel restrictions, the impact of the crisis on the solvency of firms once support measures end, as well as external geopolitical factors.[12]

Shortly before the covid-19 pandemic, rating agencies upgraded the sovereign rating of Greece, namely to B1 by Moody's Investors Service Limited, BB by Fitch and BB- by S&P Global. These ratings were confirmed recently. S&P's credit rating for Greece currently stands at BB with positive outlook. Moody's credit rating for Greece was last set at Ba3 with stable outlook. Fitch's credit rating for Greece was last reported at BB with stable outlook. DBRS's credit rating for Greece is BB (low) with stable outlook.[13] Greece's access to the international markets continued both in 2020 and 2021 through several issues of Greek government bonds (GGBs); the latest reopening of June 2031 GGB achieved the tightest spread (€MS+82 bps) for a 10-year transaction since Greece's return to the international capital markets in 2017.[14]

III PLENARY INSOLVENCY PROCEEDINGS

There is no publicly available Greek court precedent concerning recent and significant plenary insolvency proceedings in Greece involving large corporates or corporate groups. The available Greek court precedent involves small and medium-sized insolvency cases, without any major controversial issues (other than an ongoing fraudulent insolvency case of a large corporate) and not relevant to complex business or financial restructuring measures; therefore, no points worth noting can be drawn from the available court precedent.

Voluntary restructuring arrangements have been concluded during the last decade, involving:

a multinational groups with a Greek subsidiary outside any insolvency proceedings under the Insolvency Code and without a closely foreseeable insolvency of the Greek subsidiary;
b Greek project companies within project finance schemes; and
c Greek corporates, as well as small and medium-sized enterprises (SMEs), in respect of indebtedness under corporate loans and financial leases.

In all these cases, those voluntary restructuring arrangements have been entered into in an effort to ensure the continuation of operations and to agree rescheduling of existing indebtedness, new funding (where required) and new inter-creditor arrangements in a timely manner, before the occurrence of any event or circumstance that could present a real risk to the creditors or to the debtor's business.

12 ibid.
13 https://tradingeconomics.com/greece/rating.
14 https://www.pdma.gr/en/debt-instruments-greek-government-bonds/announcements/3715-issuance-of-10-year-ggb-2.

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IV ANCILLARY INSOLVENCY PROCEEDINGS

There is very limited publicly available Greek court precedent concerning ancillary insolvency proceedings in Greece for foreign-registered companies during the past three years.

V TRENDS

Law 4335/2015 (which, among other things, transposed the BRRD into Greek law), the amendments of the Bankruptcy Code and of the Code of Civil Procedure from the second semester of 2015 until 2018 and the amendments of Law 4307/2014 (including on special administration) and of Law 3869/2010 on over-indebted individual debtors, as well as the introduction of the new legal and regulatory framework on servicing and transfers of non-performing exposures of credit and financial institutions under Law 4354/2015 (as amended and in force) and the relevant decisions of the Bank of Greece (as the competent financial supervision authority) were enacted as a prior action for the purposes of the ESM financial support facility agreement, with the intention of improving the legal framework pertaining to business and non-business insolvency in line with the reforms agreed with the European institutions and the IMF.

These reforms have continued, not least because of the enhanced surveillance framework activated by the European Commission in July 2018. Law 4605/2019 (replacing the debtor's primary residence protection regime of Law 3869/2010) was enacted in this framework. The Insolvency Code enacted in 2020 and effective from 2021 is the most recent reform that follows this trend.

Commencing in the last months of 2017, Greek banks have launched sale processes for the sale of their non-performing exposures. Several non-performing bank loan and credit portfolios have already been sold and transferred to special purpose companies, with the servicing of the portfolios being assigned to licensed servicing companies; these transactions have been concluded under Law 4354/2015 (as amended and in force) or Law 3156/2003 on securitisation, and more transactions are expected to close during the coming months. Several portfolios have been transferred so far and concern secured corporate and SME loan portfolios, as well as consumer loan and credit and residential loan portfolios. In addition, in 2018, the four systemic Greek banks created a servicing platform for their common non-performing exposures. The intention is for the Greek banks to clean up their balance sheets and for the buyers to maximise recoveries, whether through restructurings (in respect of viable businesses) or through enforcement before or after insolvency of debtors and liquidation of security assets.

Law 4649/2019, enacted in December 2019 further to the EU Commission decision C (2019) 7309 (October 2019), and amended and supplemented in July 2021 further to the EU Decision C (2021) 2545 (April 2021), has introduced the Hercules Asset Protection Scheme for the guarantee of the Hellenic Republic for senior notes issued in the context of securitisation transactions originated by credit institutions. The Hercules Asset Protection Scheme is intended to facilitate and expedite the reduction of non-performing exposures of Greek credit institutions. It has already been used and will continue to be used by Greek systemic banks for large securitisation transactions, with the senior notes guaranteed by the state.

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Appendix 1

ABOUT THE AUTHORS

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Athanasia joined the firm in 2001 and is joint head of the banking, finance and capital markets group. At the core of her practice is vast experience in structuring, drafting, negotiating and advising on the feasibility and implementation of international financial transactions, including on security and hedging arrangements. She has worked on the legal and regulatory aspects of the development of a secondary market of non-performing loans in the portfolios of Greek banks and has been involved in most transactions of this type in the Greek market. Athanasia has significant experience in advising corporates and international and domestic credit and financial institutions on structured finance, financial restructurings and insolvency proceedings. Her clients include all the major banks and financial institutions that are active in the Greek market, and she has acted in innovative and ground-breaking deals that have paved the way for future transactions in the banking sector.

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