

THE  
INSOLVENCY  
REVIEW

EIGHTH EDITION

Editor  
Donald S Bernstein

THE LAWREVIEWS

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INSOLVENCY  
REVIEW

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# PREFACE

This eighth edition of *The Insolvency Review* once again offers an in-depth review of market conditions and insolvency case developments in key countries. A debt of gratitude is owed to the outstanding professionals around the globe who have dedicated their time and talents to this book. As always, their contributions reflect diverse viewpoints and approaches, which in turn reflect the diversity of their respective national commercial cultures and laws.

This year's book is being published as the world continues to cope with the covid-19 pandemic. Some countries are more affected than others but one thing is clear: in addition to the tragic impact of the pandemic on the lives and health of so many around the world, the economic hardship on individuals and businesses is extensive. This impact goes well beyond those directly affected by the virus. In many countries, lockdowns have affected a number of economic sectors. Airlines, hospitality, entertainment, dining and retail, just to name a few, have seen their revenues collapse and enormous numbers of jobs lost. The impact on employees in these sectors has been tragic, and the effect on consumers has rippled through other sectors as well. Governmental stimulus efforts have cushioned some of this impact but even so we are now seeing record numbers of business failures. These numbers will only grow until the pandemic is under control.

As can be seen in these pages, insolvency professionals and courts are coping with the resulting onslaught of business insolvencies to the best of their ability. Still, efforts to rescue and restructure businesses and save jobs are of no avail if revenues cannot timely be restored. Insolvency proceedings can be a holding action, but they cannot create revenue to allow a business to survive. The insolvency system then becomes merely an orderly means of shutting businesses down and distributing their assets.

One question to ask is whether, where businesses revenues collapse owing to an exogenous event such as a pandemic, the fact that investors and employees in some economic sectors absorb losses and hardships that are disproportionate to those in other sectors is not highly arbitrary. Some cogently argue that these costs, which are imposed by actions taken by governments, businesses and individuals to protect the public's health and wellbeing, should be absorbed by the public sector and allocated through tax policy rather than having them absorbed by the unlucky employees and stakeholders of the affected businesses.

Another question is whether allowing the collapse of these businesses, which were viable before the pandemic, will not also make the return to normal more difficult after the worst is behind us. Rather than idling for a while and then resuming, the affected economic engines are being shut down. Their lights are literally going out. Over the long run, will it be more time-consuming and costly to reconstruct these economic engines anew, and then crank them up and restart them, than it would be to support them so they can idle for a time and then resume in their current form?

Of course, for businesses to remain intact they must be provided with liquidity and capital, and programmes have been adopted in a number of countries to provide this, at least temporarily. Payment moratoria also have played a role in some countries, though these moratoria inevitably force some of the costs onto private sector parties (for example, landlords).

Frankly, there may be no good answers to these questions.

Next year, we may be in a better position to assess the economic damage done by the pandemic and how successful countries have been in preserving their business infrastructure, restoring employment and mitigating the arbitrary impacts described above. In the meantime, it is up to the insolvency system to take up the slack as best it can. I know that insolvency professionals, especially the authors contributing to this volume, are up to the task.

As I do each year, I want to thank each of 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 particularly so in this year of covid-19. As in previous years, my hope is that this year's volume will help all of us, authors and readers alike, reflect on the larger picture, keeping our eye on likely, as well as necessary, developments, on both the near and distant horizons.

**Donald S Bernstein**

Davis Polk & Wardwell LLP

September 2020

# GREECE

*Athanasia G Tsene*<sup>1</sup>

## 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). The Bankruptcy Code has subsequently been amended several times, including by Laws 3858/2010, 4013/2011, 4336/2015, 4446/2016, 4472/2017, 4491/2017 and 4512/2018.

The Bankruptcy Code and each of the above laws amending it include transitory provisions concerning insolvency proceedings opened before the entry into force of the new legislation. This chapter is limited to the insolvency proceedings currently available under the Bankruptcy Code, as amended and in force following its amendment by Law 4512/2018.

The Code applies only to business undertakings, which include sole traders, partnerships, companies and unincorporated legal entities that pursue a financial purpose. Other laws specifically regulate the winding up and reorganisation of certain regulated entities (such as credit and financial institutions, as briefly referred to in Section I.vi).

In addition, Law 4307/2014 regulates certain pre-insolvency proceedings that are available for:

- a* the settlement of debts of small businesses and professionals, in each case for business loans; and
- b* the extraordinary debt settlement and special administration of businesses qualifying as merchants under the Bankruptcy Code.

Furthermore, Law 4469/2017, enacted in 2017, regulates out-of-court workouts available to debtors who are individuals and legal entities that are capable of being declared bankrupt, have revenues from business activities and are tax resident in Greece, provided that their financial indebtedness, tax indebtedness or other indebtedness to public law legal entities meets the criteria provided for in that law.

No analysis is included in this chapter on the proceedings of settlement of debts of small businesses and professional and extraordinary debt settlement of Law 4307/2014 and Law 4460/2017, as they apply if certain criteria are met and are more likely to be relevant to small businesses.

Furthermore, Law 3869/2010 (as amended and in force) applies to over-indebted debtors being individuals (consumers or professionals, but not being capable of being

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declared bankrupt under the Bankruptcy Code) and provides for separate proceedings, intended to partially discharge and restructure indebtedness arising from non-business bank loans and credit and (for applications submitted until 28 February 2019) is also available for the exemption from liquidation of the debtor's primary residence, subject to certain criteria being met.

Law 4605/2019, which was enacted in 2019, applies to any indebtedness secured by mortgage or pre-notation of mortgage over a property located in Greece used by the debtor as the debtor's primary residence, provided that the debtor is an individual (whether being capable of being declared bankrupt under the Bankruptcy Code or not) and certain criteria are met; commencing from 30 April 2019, any new applications of debtors for the exemption from liquidation of their primary residence may only be submitted in accordance with Law 4605/2019.

No analysis is included in this chapter on the proceedings of Law 3869/2010 or Law 4605/2019.

An amendment and restatement of the Bankruptcy Code is expected to be passed later within 2020, intended to introduce changes in the interests of clarity and efficiency of certain procedures regulated by the currently applicable Bankruptcy Code and to also incorporate provisions pertaining to over-indebted persons, including with respect to pre-insolvency extra-judicial settlement or restructuring of debts and protection of primary residence.

### ***Distributional priorities***

The Bankruptcy Code, the Code of Civil Procedure and the Code for the Collection of Public Revenues 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 and, under the Bankruptcy Code, also concerns credit facilities granted as rescue funding after the opening of insolvency proceedings subject to certain criteria being met, (2) claims with a special privilege, which include those of secured creditors, and (3) unsecured claims.

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 following the opening of insolvency proceedings against the debtor (provided that, depending on the type and stage of the insolvency proceedings, a stay may be imposed in accordance with the Bankruptcy Code).

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.

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.

There is a material exception from the above allocation, in that, under Article 156a of the Bankruptcy Code, if there are any new claims (arising after 17 January 2018) secured by a pledge or mortgage over assets that were not previously subject to security, allocation will be made in the following order:

- a* the generally privileged claims for rescue funding credit facilities;
- b* claims benefiting from special privilege (including secured claims);
- c* the other generally privileged claims (for taxes, etc.) and the claims benefiting from special privilege for expenses incurred for the collection of fruit from the asset; and
- d* unsecured claims.

The above are subject only to a super-priority of any claims of employees arising before the declaration of bankruptcy, for unpaid salaries of up to six months, subject to a cap specified in respect of those employees' claims and following deduction of court expenses, costs for the administration of the bankruptcy estate, the remuneration payable to the receiver and the collective claims (i.e., those arising after declaration of bankruptcy).

### ***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 Bankruptcy 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 42 of the Bankruptcy 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 contracts entered into by the debtor for which the debtor received disproportionate consideration;
- 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; 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.

In addition, under Articles 43 and 47 of the Bankruptcy 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, or any transaction entered into by the debtor for consideration, if the relevant party or creditor (as the case may be) was aware of the cessation of payments and such a payment or transaction is detrimental

to the other creditors (and, for these purposes, deemed awareness applies in respect of a person or entity being an affiliate of the debtor within the meaning of Article 32 of Law 4308/2014); and

- b* payment of bills of exchange or promissory notes, if the issuer of the bill of exchange was aware, on the date of issue of the bill, that the payer of the bill had ceased to make payments as they fell due, or if the first endorser of the promissory note was aware of the cessation of payments of the issuer of the promissory note.

Exceptionally, certain transactions may be vulnerable even if concluded earlier than the set date of cessation of payments. Under Article 44 of the Bankruptcy Code, acts of the debtor concluded within the five years immediately prior to the declaration of bankruptcy, whereby 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, are subject to rescission, if the relevant party was, at the time of the act, aware of the debtor's intention.

#### ***Protection against rescission in certain circumstances***

The Bankruptcy Code further provides for protection against rescission in certain circumstances. Under Article 45, no rescission is available 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* where a restructuring plan is cancelled because of a failure to implement the plan, acts of the debtor carried out during the implementation stage of the restructuring plan (as defined in the Bankruptcy Code); and
- d* payments or deliveries by the debtor made in return for consideration of equal value.

Further protection may be available under Article 46 of the Bankruptcy 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 fact that the Bankruptcy Code was enacted fairly recently and has been repeatedly amended, and, as a result, insufficient market or court precedent could

not 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 Code have 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 are in the right direction but have not yet been tested in practice.

Therefore, 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 under the Bankruptcy Code. 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.

### iii Insolvency procedures

Under the Bankruptcy Code, as amended by the new provisions and the latest amendments, the following insolvency proceedings are available for debtors meeting the insolvency criteria of the Code (as amended):

- a* bankruptcy, which is regulated by Articles 1 to 98 of the Bankruptcy Code, except for the simplified bankruptcy proceedings in respect of small debtors (provided that the debtor meets at least two of the following three criteria: (1) the value of the bankruptcy estate does not exceed €150,000; (2) the net turnover based on the latest financial statements does not exceed €200,000; and (3) the employees are no more than five on average), which are regulated by Articles 162 and 163(γ) of the Bankruptcy Code);
- b* a rehabilitation agreement under the Bankruptcy Code (Articles 99 to 106(στ)) 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; and
- c* a restructuring plan under the Bankruptcy Code (Articles 107 to 131) following its approval by the court and the creditors.

In addition to the above, special administration is available under Articles 68 to 77 of Law 4307/2014 (as amended) in respect of business undertakings that are capable of being declared bankrupt and are domiciled in Greece and meet certain criteria.

Bankruptcy and special administration are liquidation proceedings; note, however, that special administration is primarily intended to transfer the assets (or groups of assets) of an undertaking as a whole (and may therefore manage to preserve the business but not the insolvent entity). Rehabilitation agreements (also available pre-bankruptcy in the case of a foreseeable inability to pay debts as they fall due) and restructuring plans (only available after declaration of bankruptcy) are rehabilitation proceedings.

The Bankruptcy Code provides that various steps of the proceedings need to be concluded within specified periods; however, the actual time limit for the proceedings may be longer than might be expected based on the letter of the law. Based on limited market precedent from successful rehabilitation proceedings, conclusion and ratification of a rehabilitation agreement can be concluded within eight months to one year. Bankruptcy has so far been primarily used for small or relatively small businesses (usually without prospects of rehabilitation) and completion of the proceedings by liquidation can take five years (if the

proceedings are not prematurely terminated for lack of funds); there is insufficient precedent on restructuring plans to provide guidance as to whether the strict deadlines provided for under the Bankruptcy Code could be complied with in practice.

Special administration is a procedure that has been introduced as a replacement for the special liquidation that was made available under an amendment of the Bankruptcy Code; special administration is a procedure required to be completed within 12 months and, failing completion, bankruptcy proceedings must be opened.

However, the rehabilitation agreement, restructuring plan and special administration may prove useful in proceedings when there is a workable plan for the business or the assets (as the case may be) and readily available funding by new investors with the agreement of the creditors, in which case these proceedings could operate almost as a pre-pack process. The latest amendments of the Bankruptcy Code are intended to make these proceedings more expedient and efficient, including by setting stricter time limits for completion of various stages of these proceedings and by strengthening the requirements for documentation and expert evidence in connection with rehabilitation.

With respect to ancillary proceedings in Greece, 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.

Under the 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. Council Implementing Regulation No. 663/2014 was adopted in June 2014, replacing Annexes A, B and C of the Insolvency Regulation. This Regulation amended the Greek Annex entries so that bankruptcy (including a restructuring plan under the Bankruptcy Code and the simplified bankruptcy proceedings for small debtors) and special liquidation are listed in Annex A and can, therefore, be main proceedings for the purposes of the Regulation. Note, however, that special liquidation is no longer available under the Bankruptcy Code and special administration of Law 4307/2014 is not included in the proceedings falling within the scope of the Insolvency Regulation.

Rehabilitation proceedings are listed in Annex A to the Recast Insolvency Regulation and, therefore, are available as main proceedings from 26 June 2017. 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 Bankruptcy 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**

##### ***Rehabilitation agreement***

The rehabilitation procedure (Articles 99 to 106(στ) of the Bankruptcy Code) is available on application by the debtor or any creditor for the court to ratify a rehabilitation agreement concluded between the debtor and its creditors (or between creditors of the debtor only).



This procedure is available: (1) in respect of a rehabilitation agreement concluded by the debtor and its creditors, 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; and (2) in respect of a rehabilitation agreement concluded only by creditors of the debtor, if there is evidence that the debtor is in cessation of payments at the time the rehabilitation agreement was entered into by its creditors.

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.

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 private rehabilitation agreement;
- b* the latest available financial statements of the debtor;
- c* a certificate of outstanding indebtedness of the debtor towards the Greek state; and
- d* an expert report on the financial condition of the debtor, a list of the debtor's assets, the accuracy and completeness of the list of creditors, the market conditions and compliance with the legal criteria for ratification of the rehabilitation agreement, data provided by the debtor, the situation of the market and the satisfaction of the legal requirements for the ratification of the agreement. The expert is selected by the debtor and the contracting creditors.

If the rehabilitation agreement is concluded only by the debtor's creditors, the documents in points (b) to (d) (above) must 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 (who is selected by the creditors). Eligible experts are banking institutions, certified auditors and auditing firms.

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 should 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:

- a* amendment of the financial terms of the creditors' claims (including, without limitation, 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);
- b* 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* reduction of the amount of the creditors' claims, on account of principal or interest; e sale of the assets of the debtor;
- e* assignment of the administration of the debtor's business to a third party, 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, 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;
- f* 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; and
- g* additional payments that must be made if the debtor's financial condition improves. The rehabilitation agreement may also include termination provisions and may also provide that a breach of its terms operates as a resolatory condition cancelling the rehabilitation agreement.

It may also include conditions precedent with respect to all or any of its five terms, in which case there must be a longstop date within which any such condition precedent must be satisfied. This longstop date must not extend beyond nine months from the date of ratification by the court of the rehabilitation agreement.

The rehabilitation agreement is entered into as a private agreement unless the obligations contemplated therein require the parties to enter into a notarial deed. If the approval of the general meeting of shareholders of the insolvent debtor is required for the implementation of the rehabilitation agreement, the Bankruptcy Code provides court protection seeking to prevent unreasonable delays or objections on the part of the shareholders by appointing a special representative authorised to exercise their voting rights, to efficiently enable the debtor and the creditors to implement the rehabilitation agreement.

The rehabilitation agreement must be approved by the required majority of creditors, being at least 60 per cent of all creditor claims including at least 40 per cent of the secured claims. For quorum and majority purposes, all claims are evidenced on the basis of the books and records of the debtor. Secured creditors vote as a single class.

The hearing of the debtor's application is set no later than two months from filing. 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.

The court will ratify the agreement without assessing whether the criterion in point (a), above, has been met, if: (1) the agreement includes an explicit statement by the contracting creditors that they agree to the content of the business plan accompanying the rehabilitation agreement; (2) the agreement includes a detailed list of the contracting and non-contracting creditors and of their respective claims, and specific reference to those creditors (contracting or non-contracting) who will be affected by the agreement and the way in which they will be affected; and (3) the agreement and the accompanying business plan have been duly notified to all non-contracting creditors affected by the agreement (including by publication in accordance with the requirements of the Bankruptcy Code).

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 the Bulletin of Judicial Publications of the Single Fund of Independent Professionals, 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, including those who did not agree to it. However, it is not binding on creditors whose claims came into existence following the opening of rehabilitation proceedings.

### ***Bankruptcy***

Under the Bankruptcy 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 is generally and permanently unable to pay its debts as they fall due. Furthermore, the debtor itself is obliged to commence bankruptcy proceedings within 30 days of the date on which it became unable to repay its debts; in addition, the debtor may apply for the commencement of bankruptcy proceedings if there is a likelihood of such inability, provided that the debtor's application is accompanied by a proposal for a restructuring plan under Article 107 et seq. of the Bankruptcy Code. Third parties will not receive any notice of an application to commence bankruptcy proceedings.

The Bankruptcy Court declares bankruptcy if, based on the financial information made available to it, the debtor's estate is sufficient to cover the costs of the proceedings. A judgment of the Bankruptcy Court declaring bankruptcy 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.

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.

Once bankruptcy has been declared, a bankruptcy officer is appointed and is 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. Commencing from 29 December 2016, the appointed receiver can be an individual (being a lawyer, an auditor or first rank accountant) certified by the Committee of Insolvency Practitioners and registered with the Registry of Insolvency Practitioners. The debtor is deprived of the administration of its pre-bankruptcy estate but is not deprived of the administration of its post-bankruptcy estate.

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 committee of creditors (elected by the meeting of creditors), which also monitors the proceedings. Decisions of the meeting of creditors or of the committee of creditors (as the case may be) 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); specific majority percentages apply, depending on the stage of the proceedings and the matter on which the decision must be made. 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:

- a* after 10 years have elapsed since the stage of the proceedings that is called the union of creditors;
- b* after 15 years have elapsed since the declaration of bankruptcy;
- c* upon the final approval and ratification of a restructuring plan;
- d* upon completion of liquidation of the bankruptcy estate; or
- e* upon repayment of all debts (including interest and principal) which fell due before the declaration of bankruptcy.

Debtors that are individuals may apply to the court for their discharge towards their creditors in respect of debts that were not satisfied from the proceeds of liquidation of the bankruptcy estate. That application may be filed after the second anniversary of the declaration of bankruptcy or after the date of cessation of the bankruptcy proceedings (whichever comes first) and the discharge may be declared by the court if the debtor is found by the court to have acted in good faith and in a spirit of cooperation at the time of declaration of bankruptcy and throughout the bankruptcy proceedings. No discharge can be declared for debts resulting from wilful misconduct or grossly negligent conduct on the part of the debtor. These criteria are not examined and, in any case, the discharge is effective upon ratification of a restructuring plan.

### ***Restructuring plan***

A restructuring plan may be initiated on the application to the court by:

- a* the debtor, either at the same time as its application to be declared bankrupt or within three months of the date of the declaration of bankruptcy (which may be extended by the court for a further period of not more than one month, provided that it is evidenced that the extension would not be detrimental to the creditors and there are serious indications that the creditors would accept the restructuring plan); or
- b* creditors representing at least 60 per cent of the total liabilities of the debtor (including at least 40 per cent of secured claims and other claims with a special privilege), with their application to the court for the declaration of bankruptcy in respect of the debtor. Calculation of these percentages must be made and confirmed by a qualifying accountant or auditor on the basis of the latest published financial statements of the debtor (or the debtor's accounting books and records, as the case may be).

For these purposes, the Bankruptcy Code includes specific requirements regarding the content of the draft restructuring plan. Creditors must approve a draft restructuring plan before it is implemented. Accordingly, creditors will receive notice of the meeting to discuss and vote on the restructuring plan. However, there is no general obligation to inform third parties of the meeting to consider the restructuring plan.

Creditors secured by a mortgage, pre-notation of a mortgage or a pledge will continue to be secured by that security interest except to the extent that the draft restructuring plan provides otherwise (i.e., the plan can affect secured creditors' rights). The draft restructuring plan may not provide for the reduction of claims to less than 10 per cent of their original amount and must provide for repayment within three years.

The court will set a date not more than two months after the declaration of bankruptcy, or the initiation of a restructuring plan process (as the case may be under point (a) or (b), above), for the special meeting of the creditors (attended by the judge rapporteur), who will need to discuss and vote on the approval of the restructuring plan. Creditors not affected by the restructuring plan are not entitled to vote at the meeting. Creditors not attending the meeting are deemed to have voted in favour of the restructuring plan unless their claim is reduced to nil by the restructuring plan, in which case they are deemed to have rejected the restructuring plan. The restructuring plan must be approved by creditors representing at least 60 per cent of the total claims against the debtor (including at least 40 per cent of any secured claims).

Following its approval by the creditors, the restructuring plan is submitted to the court for ratification. The debtor and the bankruptcy officer may provide their comments to the court. Any party with a legitimate interest in the debtor's restructuring may also intervene in the process. If the restructuring plan provides that specific obligations have to be performed or other steps have to be taken by the debtor or by other parties prior to the ratification of the restructuring plan by the court, the restructuring plan will only be ratified by the court following the performance of those obligations or the taking of those steps.

Following the hearing, the court may ratify the restructuring plan or reject the restructuring plan (of its own motion or on the application of a creditor having a legal interest in the plan) on the express rejection grounds provided for in the Bankruptcy Code. The ratifying or rejecting judgment of the court is subject to appeal. The filing of an appeal does not suspend the restructuring process contemplated by the restructuring plan.

When the judgment ratifying the restructuring plan becomes final and conclusive (i.e., it is no longer subject to appeal), the restructuring plan becomes binding on all creditors (including any dissenting creditors, any creditors that have not filed their claims and any creditors that have not attended the meeting of creditors) and the bankruptcy process is concluded. The restructuring plan will then form the basis for the reopening of individual enforcement proceedings against the debtor by creditors. Furthermore, the court's judgment itself constitutes an enforceable right in respect of any obligation undertaken in the restructuring plan.

The Bankruptcy Code also provides for the circumstances in which a ratified restructuring plan may become void or voidable, and the consequences of cancellation. Furthermore, the restructuring plan is automatically cancelled if the debtor is declared bankrupt by the court after the ratification of the restructuring plan by the court. Following an automatic cancellation:

- a* any claims of creditors not fully discharged under the restructuring plan are restored to their status as it existed prior to the ratification of the restructuring plan by the court;
- b* security interests released under the restructuring plan will not revive unless expressly provided to the contrary in the restructuring plan and annotated in the public books of the competent land register or cadastre;
- c* security interests created pursuant to the restructuring plan continue to secure the relevant secured claims up to the amount and for the time agreed in the restructuring plan unless the restructuring plan provides otherwise; and
- d* claims arising from financing granted after the ratification of the restructuring plan by the court rank as generally privileged claims.

### ***Special administration***

Law 4307/2014 (Articles 68 to 77) introduced special administration in respect of business undertakings that are capable of being declared bankrupt and are domiciled in Greece. Special administration is available in respect of either a qualifying debtor that is generally and permanently unable to pay its debts as they fall due, or a debtor being a company limited by shares that meets the criteria for an application for dissolution of the company by court decision under Article 48 of Law 2190/1920 (currently Article 165 of Law 4548/2018) for at least two consecutive financial years (including on the basis that the own funds of the company have fallen below one-tenth of the paid-up share capital).

Special administration commences with the filing of an application to the court of first instance of the debtor's principal place of business; the application is submitted by one or more creditors (including, at least, one credit institution or a financial leasing company or a factoring company supervised by the central bank of Greece), provided that the creditor or creditors represent claims of at least 40 per cent of the aggregate debtor's indebtedness. The application must also nominate the proposed special administrator and be accompanied by a declaration by that proposed special administrator that it will agree to take on the role, if appointed by the court.

Upon filing of the application for the special administration, any pending insolvency proceedings are automatically suspended. During the period between the filing of the application and the issue of the court judgment on the application, the court may, on application by a third party with a legitimate interest, order a stay of individual enforcement proceedings against the debtor, a prohibition of disposals by the debtor or any other appropriate preventive measure.

If the debtor is placed under special administration, all enforcement proceedings are automatically suspended until completion of the special administration. Upon publication of the judgment placing a debtor into special administration, the powers of the constitutional bodies and of the management of the undertaking are transferred to the special administrator.

For the appointed special administrator to continue the operation of the business and to cover special administration expenses (including its remuneration), the special administrator may conclude financing agreements or agreements for the supply of goods or services that will benefit from the first ranking privilege of Article 154(a) of the Bankruptcy Code.

The special administrator is mandated to liquidate at least 90 per cent of the book value of the debtor's business and assets through public tender within 18 months of the date of issue of the court judgment on the application for the placement of the debtor into special administration.

Liquidation may be effected either by sale of the business as a whole or by sale of operational parts of the business or by sale of individual assets. The results of the public tender must be ratified by the court. The claims of the creditors will be satisfied out of the proceeds of the liquidation of the debtor's assets.

If the 18-month deadline is not met, the special administration proceedings are terminated and the special administrator must file an application for the declaration of debtor's bankruptcy.

#### **v Control of insolvency proceedings**

All insolvency proceedings under the Bankruptcy Code are opened by court judgment (with the exception of the rehabilitation agreement, which is first entered into between the debtor and creditors and subsequently ratified by the court) and completion of each stage of the proceedings is under the supervision, and subject to a judgment or order, of the competent court.

Creditors can commence bankruptcy proceedings, reach a rehabilitation agreement between creditors and submit it to the court for ratification, and commence special administration proceedings. They can also participate in the proceedings by lodging their claims, supporting (or opposing) various steps of the proceedings (where permitted under the Bankruptcy 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 Bankruptcy 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 Bankruptcy Code.

Specific duties are provided for under the Bankruptcy 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 and criminal liability. The same applies if bankruptcy results from gross negligence or wilful misconduct of the directors, or 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 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 Bankruptcy Code. Specific provisions apply with respect to their reorganisation and winding up; these provisions transpose into Greek law the relevant EU Directives. 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.

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.

Furthermore, 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.

There is limited Greek court precedent concerning cross-border insolvency cases and none of that 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 (by means of a change of place of registered office outside Greece or by 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 protect against uncertainties resulting from the enactment and subsequent amendments of the Bankruptcy Code. However, the most recent amendments of the Bankruptcy Code are steps in the right direction and may also 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 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 began to show signs of recovery. However, 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. In view of the above, 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 safeguard financial stability and continued implementation of structural reforms aiming, among others, 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.

The first four EPPS quarterly reviews were completed in November 2018, February 2019, June 2019 and November 2019 respectively. 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 the completion of the Third Economic Adjustment Programme. In 2019, the Greek government managed to tap the markets three times with the issuance of a five-year bond on 29 January 2019 (€2.5 billion, 3.6 per cent yield), a 10-year bond on 5 March 2019 (€2.5 billion, 3.9 per cent yield), the first such issuance since the beginning of the crisis in 2009, a seven-year bond on 16 July 2019 (€2.5 billion, 1.90 per cent yield) and the re-opening of the 10-year bond on 15 October 2019 (€1.5 billion, 1.5 per cent yield). Economic growth continued in 2019, but at a slightly lower pace. In particular, the real GDP growth rate decreased in the first half of 2019 to 1.5 per cent (year on year).

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.<sup>2</sup> While the main effects of the covid-19 pandemic are expected to be concentrated in the second quarter of this year, Greece's large tourism sector is likely to be affected in the third quarter as well, since more than 70 per cent of tourism receipts are concentrated in the main summer months. Amid limited consumption opportunities during the lockdown and falling disposable income, private consumption is forecast to experience a strong decline in 2020. Greece's main export markets are expected to be among the worst affected countries, leading to a drop in demand for Greek goods and services, also amplified by the large share of tourism and shipping in exports.

The fiscal measures enacted during the lockdown period to protect the economy are expected to cushion consumer spending to some extent and pave the way for a faster recovery, in 2021. Investment is expected to be strongly affected by the increased uncertainty and lower turnover in 2020 but the liquidity support provided by the Greek government and the EU institutions should help companies to bridge the lockdown period and speed up the recovery.

The authorities have adopted an unprecedented amount of measures to support the economy. According to the estimates of the European institutions, the overall size of the measures is 10.5 per cent of GDP, of which 5 per cent of GDP are budgetary measures and the net impact on the budget balance of these measures is estimated at 3.7 per cent of GDP in 2020, as part of the measures are fiscally neutral.

The government also adopted 1.9 per cent of GDP of measures that aim to improve the liquidity of the private corporate sector. Payment of certain tax obligations have been deferred to autumn, and the authorities created a credit guarantees scheme implemented through the Hellenic Development Bank, which may unlock loans up around 5 per cent of GDP. The measures adopted to fight the covid-19 pandemic only have a temporary effect in 2020.

The cost of tackling the crisis will take its toll on the primary balance. Greece's general government balance recorded a surplus of 1.5 per cent of GDP in 2019, on the back of a strong revenue outturn and transfers of the SMP-ANFA profit equivalents. The primary

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2 European Economic Forecast of the European Commission (Spring 2020, Institutional Paper 125, May 2020, Overview: A deep and uneven recession, an uncertain recovery), [https://ec.europa.eu/info/sites/info/files/economy-finance/ip125\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip125_en.pdf).

surplus monitored under enhanced surveillance reached 3.5 per cent of GDP in 2019, while the updated forecast of the European institutions expect the primary balance to reach a small surplus in 2021.

The general government deficit is forecast to reach 6.25 per cent of GDP in 2020 and to decrease to about 2 per cent in 2021 based on a no-policy-change assumption. Public debt is expected to increase to around 196 per cent of GDP in 2020 before declining to around 183 per cent in 2021, supported by the economic recovery.<sup>3</sup>

The Greek economy continued, until recently, to recover, and economic policy credibility has largely been restored. Commitment to fiscal stability, a rebalancing of the fiscal policy mix and a timely implementation of the government's ambitious reform programme are the main driving forces for a return of the economy to a sustainable growth trajectory in the medium term. Today, the normal course of the economy is temporarily disrupted by the covid-19 pandemic, which, as described above, is a severe external shock exerting an impact through demand, supply and also through the financial system. Therefore, on the domestic front, the coronavirus spread poses the most serious downside risk.<sup>4</sup>

In 2020, the Greek government managed to tap the markets three times so far with a 15-year bond on 28 January 2020 (€2.5 billion, 1.875 per cent yield), a seven-year bond on 15 April 2020 (€2 billion, 2 per cent yield) and a 10-year bond on 9 June 2020 (€3 billion, 1.5 per cent yield).<sup>5</sup>

Shortly before the covid-19 pandemic, rating agencies upgraded the sovereign rating of Greece, which is currently B1 by Moody's Investors Service Limited, BB by Fitch and BB- by S&P Global. These ratings were confirmed recently with a stable outlook.<sup>6</sup>

At the Special European Council (17-21 July 2020), in response to the socio-economic 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 will have to prepare national recovery and resilience plans for 2021-2023, which will need to 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. The assessment of these plans will be approved by the Council by a qualified majority vote on a proposal by the Commission. The disbursement of grants will take place only if the agreed milestones and targets set out in the recovery and resilience plans are fulfilled and

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3 European Economic Forecast of the European Commission (Spring 2020, Institutional Paper 125, May 2020, chapter 5 on Greece), [https://ec.europa.eu/info/sites/info/files/economy-finance/ip125\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip125_en.pdf) and Enhanced Surveillance Report, Greece, May 2020 (Institutional Paper 127, May 2020), [https://ec.europa.eu/info/sites/info/files/economy-finance/ip127\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip127_en.pdf).

4 Bank of Greece, Governor's Annual Report (From Crisis to Pandemic to Growth) – 2019, 10 March 2020 Press Release, <https://www.bankofgreece.gr/en/news-and-media/press-office/news-list/news?announcement-t=49748136-1841-47d7-b5a5-e6a49bc99b6d>.

5 <http://www.pdma.gr/en/>.

6 <https://tradingeconomics.com/greece/rating>.

if, exceptionally, one or more Member State considers that there are serious deviations from the satisfactory fulfillment of the relevant milestones and targets, they may request that the president of the European Council refer the matter to the next European Council. The extent to which each Member State (including Greece) will benefit from the recovery package will depend on the EU Commission's allocation criteria and the Member State's absorption rate.<sup>7</sup>

### 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 and not relevant to complex business or financial restructuring measures; therefore, no points worth noting can be drawn from the available court precedent.

However, during the past three years, there have been voluntary restructuring arrangements involving:

- a* multinational groups with a Greek subsidiary outside any insolvency proceedings under the Bankruptcy 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, the 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.

### 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 12 months.

### V TRENDS

Law 4335/2015 (which, among other things, transposed the BRRD into Greek law) and the recent amendments (between 2015 and 2018) of the Bankruptcy Code and of the Code of Civil Procedure, 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)

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<sup>7</sup> <https://www.consilium.europa.eu/en/meetings/european-council/2020/07/17-21/>.

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.

Commencing from 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 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 was enacted in December 2019, further to the European Commission State Aid approval under SA. 53519 granted in October 2019, for the introduction of 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, and has already been used for a state guarantee for the senior notes under the 'Cairo' securitisation transaction originated by Eurobank and is expected to be used shortly for state guarantees for senior notes under securitisation transactions to be originated by at least two more systemic Greek banks.

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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 been working 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 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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