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# Restructuring across borders

## Greece

Corporate restructuring and insolvency procedures | January 2022

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# Contents

# Introduction

## The Greek insolvency and restructuring regime has been the subject of several recent reforms.

The bankruptcy code was enacted by Law 3588/2007 (amending and replacing bankruptcy and other insolvency provisions that applied prior to 10 July 2007) and was subsequently amended several times, including by Laws 3858/2010, 4013/2021, 4336/2015, 4446/2016, 4472/2017, 4491/2017 and 4512/2018.

In parallel with the bankruptcy code, certain additional pre-insolvency procedures were available under Law 4307/2014 and Law 4469/2017, on criteria that were more likely to be relevant to small businesses.

The above fragmentation of the Greek legal framework on insolvency proved to be inefficient as (1) it did not provide for adequate measures that could help address over-indebtedness in a timely fashion and prevent insolvency and (2) 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 and replaced the bankruptcy code and 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).

The Insolvency Code transposes into Greek law Directive (EU) 2019/1023 on preventive restructuring framework and introduces 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)[1].

1. No analysis is included on procedures concerning individuals and small businesses.

# Introduction (cont.)

Under the Insolvency Code, the following pre-insolvency and insolvency proceedings are available for debtors being businesses, in each case meeting the relevant criteria:

a. out-of-court mechanism with a view to reaching a restructuring agreement (Articles 5–30), available for relatively small debtors 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[2];

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; and

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).

In accordance with the transitory provisions included in the Insolvency Code, proceedings opened under the bankruptcy code and pending at the time the Insolvency Code came into force, continue to be subject to the previously applicable provisions unless the general meeting of the creditors participating in the relevant proceedings decide that the proceedings should be subject to the new provisions of the Insolvency Code.

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).

2. This pre-insolvency procedure is not discussed, as it is only relevant to small debtors

# Bankruptcy

Bankruptcy is the name given to the legal status of bankruptcy-eligible debtors which have been declared bankrupt by court judgment. It is available to individuals as well as those legal entities that pursue an economic purpose by carrying on business or professional activities.

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. The debtor must file for bankruptcy within 30 days of the date on which it became generally and permanently unable to repay its debts.

When a declaration of bankruptcy is sought by the debtor, the court may also declare that debtor bankrupt based on its foreseeable (rather than actual) inability to pay its debts as they fall due.
The purpose of the bankruptcy is to ensure that the debtor's property is liquidated and the liquidation proceeds are distributed between the creditors in accordance with their respective rights of priority.

Where the debtor is a business undertaking (other than a very small entity[3]) and the application is submitted by one or more creditors representing at least 30 per cent. of all creditors' claims by value, including at least 20 per cent. of the secured claims by value, 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.

3. "Very small debtors" is defined by law (article 2 of Law 4308/2014) and, as the law now stands, means a debtor in respect of which at least two of the following three criteria are met: (a) total assets up to EUR350,000; (b) net turnover up to EUR700,000; and (c) average number of employees up to ten, in each case based on the debtor's balance sheet and further provided that any debtor with a net turnover exceeding EUR2m does not qualify as a very small debtor.

# Bankruptcy (cont.)

From the declaration of bankruptcy, the court will appoint a receiver (*syndikos*) which (except in limited cases) must be designated in the application for declaration of bankruptcy and must be an eligible person registered in the Register of Insolvency Practitioners. The receiver is responsible for the administration of the debtor for the purposes of liquidating and distributing the proceeds of the liquidation to the creditors. A "*judge rapporteur*" (ie a judge of the Bankruptcy Court) will also be appointed to supervise the bankruptcy procedure. The *judge rapporteur* will submit reports to the court when required (depending on the stage of the procedure) and the receiver will seek the prior approval of the *judge rapporteur* in relation to various actions during the performance of his duties.

Pursuant to the Insolvency Code, from 1 March 2021 only individuals or legal entities registered in the Register of Insolvency Practitioners may carry on the functions of a receiver (*syndikos*).

The court will also fix the date of "cessation of payments", meaning 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 in its judgment declaring bankruptcy cannot fall earlier than two years prior to the date of the issue of the judgment declaring bankruptcy.

The setting of the date of cessation of payments is material to the creditors, as it will affect the vulnerability of certain transactions and will determine which transactions are subject to rescission by the *syndikos*. Certain transactions (including, among others, transactions in the ordinary course of trade and financial collateral arrangements) are protected from rescission.

Exceptionally, certain transactions may be vulnerable even if concluded earlier than the set date of cessation of payments, 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.

During the bankruptcy procedure, creditors can give notice of their claims to the court or to the receiver.

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.

Otherwise, the exit route is by way of an in-bankruptcy rehabilitation agreement (in circumstances where, in accordance with the Insolvency Code, an application for ratification of a rehabilitations agreement (whether submitted by the debtor or creditors of the debtor) is accompanied by an application for declaration bankruptcy).

Debtors (whether individuals or legal entities) may be discharged 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.

# Rehabilitation procedure

The rehabilitation procedure (Articles 31-64 of the Insolvency Code) 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.

It is available on the application of the debtor (carrying on a business activity and having the centre of its main interests in Greece) or the creditors of the debtor. For the debtor to be able to make the application, a rehabilitation agreement must have been concluded between (or must be consented to by) the debtor and creditors representing more than 50 per cent. of the secured claims and more than 50 per cent. of the other claims by value and there must also be 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 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 also files an expert report.

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.

If any of the above percentages of claims is not reached, the court may still 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 creditor claims are treated more favourably than other creditor claims that would be of a lower ranking in the event of liquidation in bankruptcy;

# Rehabilitation procedure (cont.)

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[4] (in accordance with the criteria set by Law 4308/2014), the rehabilitation agreement was proposed by the debtor or was concluded with the consent of the debtor.

When a rehabilitation agreement has been concluded between a debtor and its creditors, the debtor's application must be supported by:

a. a copy of the signed rehabilitation agreement;

b. the latest available financial statements of the debtor;

c. the statement of all the creditors' claims;

d. an expert report, which must be prepared in accordance with Article 48 of the Insolvency Code by an eligible expert (ie registered in the register of experts of Article 65 of the Insolvency Code) selected by the debtor and the consenting creditors. The expert report must 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, 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 apply to the court for the declaration of bankruptcy in respect of the debtor, as well as the expert report of Article 48 of the Insolvency Code prepared by an eligible expert appointed by the creditors and those documents (of points b, c and e above) that are already available to the creditors.

The court (if so requested by the debtor or any creditor) may appoint a special administrator specifically responsible for certain managerial acts specified by the court with a view to preserving the debtor's assets, ensuring protection with regard to certain transactions and monitoring the rehabilitation process.

There are no particular restrictions on what may be included in a rehabilitation agreement, other than the agreement cannot be against the law.

Matters commonly covered include:

– the 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);

– the conversion of debt into equity whether by the issue of new shares or by the issue of convertible bonds;

– intercreditor 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;

– the reduction of the amount of the creditors' claims, on account of principal and/or interest;

– the sale of the assets of the debtor;

– the 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;

– 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;

– additional payments that must be made if the debtor's financial condition improves; and/or

– 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.

The rehabilitation agreement may also include termination provisions and may also provide that a breach of its terms operates as a resolutory condition (*dialytiki airesi*) cancelling the rehabilitation agreement.

4. See definition of "very small debtor" in footnote 3 above.

# Rehabilitation procedure (cont.)

It may also include conditions precedent (*anavlitiki airesi*) with respect to all or any of its 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 six 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 debtor is a legal entity, its board of directors or its administrator is exclusively competent to consent to a rehabilitation agreement and, 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.

Where the approval of the general meeting of shareholders of the insolvent debtor is required for the implementation of the rehabilitation agreement, the court, with its judgment ratifying the rehabilitation agreement may prevent unreasonable delays or objections on the part of the shareholders. The court can do this by appointing a special representative authorised to exercise their voting rights, in order to efficiently enable the debtor and the creditors to implement the rehabilitation agreement.

Provided that creditors representing the required thresholds set out in the beginning of this section have consented (or, subject to deemed consent criteria of the Insolvency Law being met, deemed to be consenting) to the rehabilitation agreement, the court will ratify the agreement if the following criteria are cumulatively met:

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

– it is likely that the non-consenting creditors as well as the creditors who are deemed to be consenting will not be in a worse economic position than they would have been in in the event of the debtor's bankruptcy;

– the rehabilitation agreement is not the result of malicious, wrongful or unlawful acts of the debtor, any creditor or any third party, including those committed in breach of anti-trust laws;

– 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 the unequal treatment; and where the ratification of a rehabilitation agreement is requested by the creditors, the debtor consents to the rehabilitations agreement. 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.

# Rehabilitation procedure (cont.)

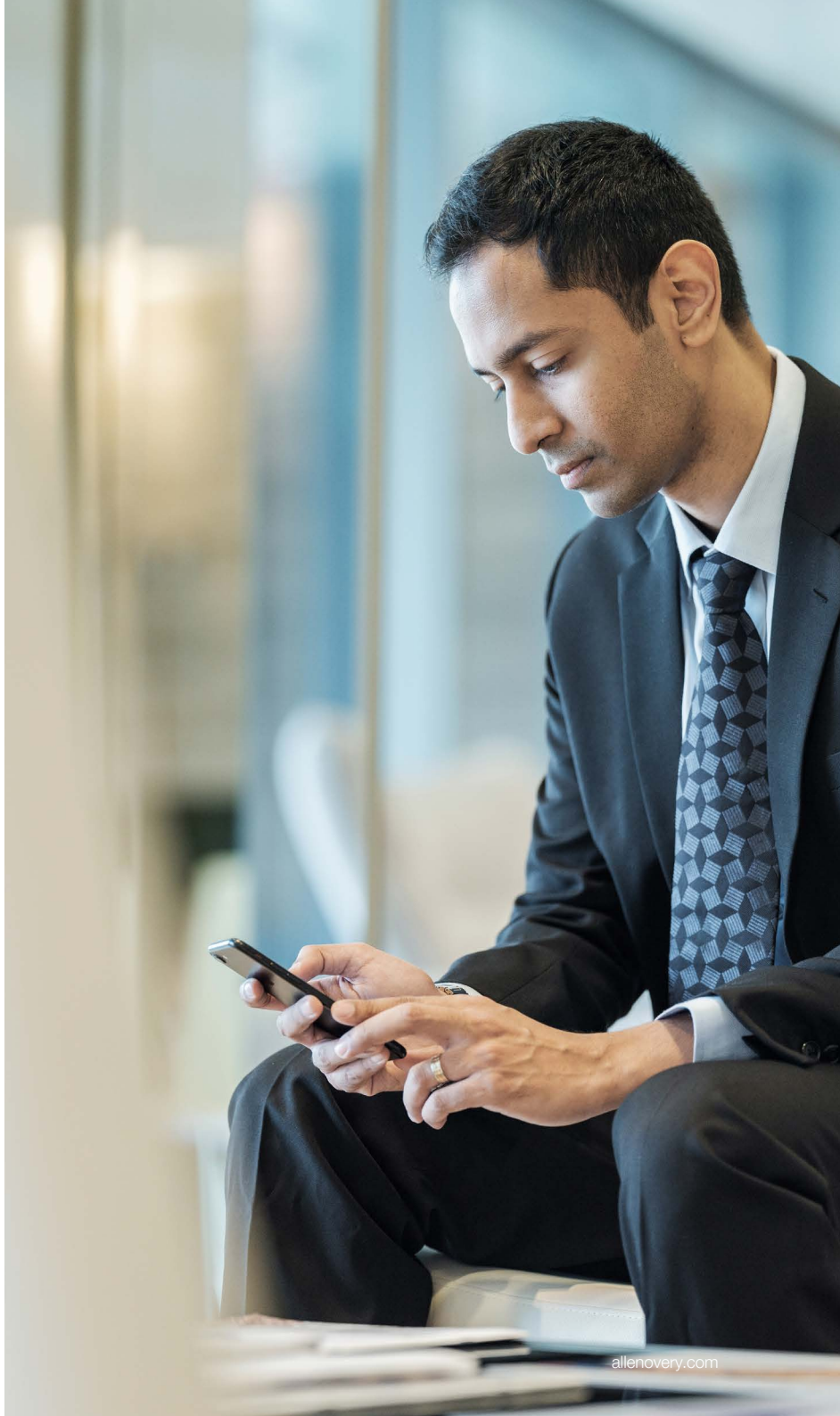
If it is likely that the ratification of the rehabilitation agreement will not reverse any actual cessation of payments, the court will not ratify the rehabilitation agreement.

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).

The court judgment ratifying or denying ratification of a rehabilitation agreement is published with the General Commercial Registry and the Electronic Solvency Register, on application of the debtor or any creditor. In case of court ratification of a rehabilitation agreement, the relevant court judgment, which includes the key terms of that rehabilitation agreement, is made available to the public. However, the rehabilitation agreement itself is not made public.

Once ratified by the court, the rehabilitation agreement becomes fully binding on the debtor and on all creditors, including creditors who did not agree to it. It is not binding, however, on creditors whose claims came into existence following the opening of rehabilitation proceedings.

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.



# Liquidation under company law

The general meeting of shareholders of a company may decide at any time to terminate the company if the company accumulates losses and has debts that cannot be paid in the normal course of business. In addition:

– on application by the shareholders or by any party having a legitimate interest, the court may place a company into liquidation if its initial share capital has not been paid, or if the share capital falls below the legal minimum share capital amount, or if the company has not registered financial statements approved by the general meeting of shareholders for at least two financial years; and

– on application by the shareholders representing at least 1/3 of the paid-up share capital, the court may place a company into liquidation if there is a serious reason due to which the continuation of the company is manifestly and permanently impossible.

If the company has not been adjudicated bankrupt, the dissolution and liquidation of the company will be conducted under the relevant rules of company law and the liquidation will be a solvent liquidation (*Ekkatharisis*). During the course of the solvent liquidation, a company can be adjudicated bankrupt, in which case the person appointed to conduct the solvent liquidation will be replaced by the receiver and the solvent liquidation will be converted into a liquidation in bankruptcy.

# EC regulation on insolvency proceedings

Council Implementing Regulation No. 663/2014 was adopted in June 2014, replacing Annexes A, B and C of the Regulation. This 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 purpose of the Regulation.

Rehabilitation proceedings are not included in Annex A of Council Implementing Regulation No. 663/2014 and therefore are not a main proceeding for the purpose of the Regulation. However, it should be noted that the rehabilitation proceedings are listed in Annex A of Regulation (EU) 848/2015 of the European Parliament and the Council of 20 May 2015 on insolvency proceedings (the **Recast Regulation**) and will therefore be available as main proceedings from 26 June 2017. In the recast Regulation the definition of main proceedings has been broadened to include pre-insolvency rescue proceedings.

Further to the enactment of the Insolvency Code, the only procedures which are secondary procedures under the Regulation are bankruptcy (including the simplified bankruptcy proceedings for small debtors) and rehabilitation agreement.

# Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at Allen & Overy, or email rab@allenovery.com.

This factsheet has been prepared with the assistance of Bernitsas Law. Any queries under Greek law may be addressed to the key contacts listed below:

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# Further information

Developed by Allen & Overy's market-leading Restructuring group, "**Restructuring Across Borders**" is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, Asia, the Middle East and the U.S.

To access this resource, please click here.

For more information, please contact:


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