IN-DEPTH

Insolvency

GREECE



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Insolvency

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In-Depth: Insolvency (formerly The Insolvency Review) offers an incisive review of the most consequential features of the insolvency laws and procedures in key jurisdictions worldwide. It also examines the practical implications of recent market trends and insolvency case developments.

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Summary

INSOLVENCY LAW, POLICY AND PROCEDURE
INSOLVENCY METRICS
PLENARY INSOLVENCY PROCEEDINGS
ANCILLARY INSOLVENCY PROCEEDINGS
OUTLOOK AND CONCLUSIONS
ENDNOTES

Insolvency law, policy and procedure

Statutory framework and substantive law

Greek legislation and regulation pertaining to insolvency

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

In parallel with the Bankruptcy Code, Law 4307/2014, enacted in 2014, regulated certain pre-insolvency proceedings available for:

1. the settlement of debts of small businesses and professionals, in each case arising from business loans; and
2. the extraordinary debt settlement and special administration of businesses qualifying as merchants under the Bankruptcy Code.

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

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

The above fragmentation of the Greek legal framework pertaining to insolvency proved to be inefficient. It did not provide for adequate measures and procedures intended to operate as a warning that could address over-indebtedness in a timely fashion and prevent insolvency, for both businesses and individual debtors. At the same time, where insolvency had already occurred, despite the legislative changes that were in the right direction, there

remained provisions that could create legal uncertainties, while the procedures that had to be followed resulted in delays in reaching an effective restructuring, rehabilitation or liquidation (as appropriate in each case).

Law 4738/2020 (the Insolvency Code) was passed in October 2020, replacing the above laws with effect from 1 March 2021 (for businesses), 1 June 2021 (for individuals) and 27 October 2020 or 1 July 2021 (as the case may be, in respect of certain provisions of the Insolvency Code), to rectify deficiencies of the previously applicable provisions, by introducing a comprehensive legal framework partly intended to prevent insolvency and partly intended to address actual or forthcoming insolvency, for all categories of debtors (businesses, independent professionals and households). The amendments introduced in the Insolvency Code to date (including during the second semester of 2023 and during the first months of 2024) have been intended to better clarify the scope of certain provisions in the interests of efficiency, transparency and legal certainty, and to simplify certain procedures in connection with vulnerable debtors and small bankruptcies.

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

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

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

The Insolvency Code further includes provisions facilitating, subject to certain conditions being met, the active participation of the state and social security funds in out-of-court restructurings and rehabilitation agreements (in connection with claims for taxes and duties or social security contributions), provisions in connection with disposals and liquidations effected in accordance with the Insolvency Code and provisions enabling the issue of secondary legislation for the implementation and application of the Insolvency Code.

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

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

Distributional priorities

Articles 975–978 of the Code of Civil Procedure include specific provisions on the priority of claims of creditors and distinguish between:

1. claims with a general privilege, which applies by operation of law and concerns, among others, claims on account of valued added tax and other taxes, claims of public law entities, claims of employees and social security funds;
2. claims with a special privilege, which include those of secured creditors; and
3. unsecured claims.

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

Under Article 977 of the Greek Code of Civil Procedure, if there are only claims with a general privilege and claims with a special privilege, the former may only be satisfied up to one-third of the proceeds of liquidation of the bankruptcy estate. If there are claims of all three categories, those with a general privilege are satisfied up to 25 per cent, those with a special privilege are satisfied up to 65 per cent and unsecured claims are satisfied up to 10 per cent of the proceeds of liquidation of the bankruptcy estate. If there are no claims with a special privilege, those with a general privilege are satisfied up to 70 per cent and unsecured claims are satisfied up to 30 per cent of the proceeds of liquidation of the bankruptcy estate. If there are only claims with a special privilege and unsecured claims, those with a special privilege are satisfied up to 90 per cent and unsecured claims are satisfied up to 10 per cent of the proceeds of liquidation of the bankruptcy estate. For auctions scheduled to be conducted after 1 January 2022, if any claims with a general privilege and any claims with a special privilege are not fully satisfied from the 25 per cent or the 65 per cent of the liquidation proceeds respectively, they cannot be included for the remainder in the pool of unsecured claims that are satisfied *pro rata* from the 10 per cent of the proceeds of liquidation of the bankruptcy estate.

Article 167 of the Insolvency Code provides that, subject to certain criteria being met, claims from credit facilities to finance the continuation or preservation of the debtor's business (including for the provision of goods or services to the debtor) or claims of suppliers of goods or services for the debtor's business, in each case in accordance with

the rehabilitation agreement or during the period of negotiations (for up to six months) with a view to reaching a rehabilitation agreement, are first ranking claims with general privilege (point (a) above) and their full repayment is a prerequisite to the allocation of any proceeds to other claims pursuant to Article 977 of the Greek Code of Civil Procedure.

The opening of insolvency proceedings does not affect the priority ranking of validly created security (claims of point (2) above). Secured creditors (as opposed to unsecured creditors) can initiate individual enforcement proceedings for their secured claim during a period of nine months after the declaration of bankruptcy in respect of the debtor, unless liquidation of the insolvency estate is to be made by a sale of the assets as a whole or by a sale of a group of operational assets and the security assets form part of that group, in which case a stay of enforcement will be imposed in accordance with the Insolvency Code, provided that, if such sale of the assets as a whole (or of a group of operational assets) is not successfully completed and, therefore, terminated in accordance with the relevant provisions of the Insolvency Code, secured creditors can initiate individual enforcement proceedings for their secured claims for a period of nine months after such termination. Secured claims can also be satisfied out of the proceeds of liquidation of the insolvency estate, but only to the extent that the proceeds of liquidation of the relevant security assets are not sufficient for the full repayment of their secured claims.

Vulnerable transactions

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

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

1. any acts of the insolvent debtor carried out without consideration being received in return and that have the effect of reducing the value of the debtor's estate and any undervalue transactions entered into by the debtor (other than disposals made out of a moral or legal duty or as necessary to sustain the debtor's children, provided that in each case such disposals were in proportion to and did not deteriorate the debtor's financial condition);
2. any payment of debts that are not yet due and payable;
3. any repayment of due and payable debts not made by payment in cash or in the pre-agreed manner (other than voluntary transfers of properties to credit or financial institutions in or towards repayment of due and payable debts); and
4. any security interest created over the debtor's assets to secure a pre-existing debt whereby the debtor had not pre-agreed to grant such a security interest, or to secure a new debt replacing a pre-existing debt (but subject to the protection

accorded to security interests in favour of banks pursuant to Legislative Decree 17.7./13.8.1923).

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

1. any payment of debts that are due and payable; and
2. any transaction entered into by the debtor for consideration.

This applies in each case if the relevant party or creditor (as the case may be) was aware of the cessation of payments and that such payment or transaction is detrimental to the other creditors. For these purposes, deemed knowledge of that party or creditor applies in respect of a spouse, close relative, founder, administrator, director, or manager of the debtor or, where that party or creditor is an affiliate of the debtor within the meaning of Article 32 of Law 4308/2014, if the terms of the transaction manifestly deviate from normal market terms.

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

Protection against rescission in certain circumstances

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

1. 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;
2. 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);
3. disposals made by the debtor against payment of consideration for equal value;
4. transactions that were reasonably and directly necessary for the negotiations with a view to reaching a rehabilitation agreement (including the payment of fees and costs for the negotiation, approval or ratification of a rehabilitation agreement or for the fees and costs for professional advisors for these purposes); and
5. transactions entered into for the implementation of an out-of-court settlement or of a rehabilitation agreement, in each case in accordance with the relevant sections of the Insolvency Code.

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

1. 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;
2. 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
3. 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.

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.

Prior to the replacement of the Bankruptcy Code by the Insolvency Code, the rehabilitation provisions of the Bankruptcy Code had often been used by debtors as a means of delaying creditors and not in a genuine effort to rehabilitate their failing businesses. This was partly due to the repeated amendments of the Bankruptcy Code, which resulted in legal uncertainties and partly due to inefficiencies of the Greek court system and the lack of specialised insolvency practitioners.

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

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

Insolvency procedures

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

1. out-of-court mechanism with a view to reaching a restructuring agreement (Articles 5–30), available for relatively small debts to credit or financial institutions, the state and social security funds, provided that certain criteria are met, through an

electronic platform operated by the Special Secretariat for the Management of Private Debt;

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

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

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

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

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

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

The UNCITRAL Model Law, which applies to non-EU states, was ratified by Law 3858/2010 and may prove very helpful for the purposes of recognition by the Greek courts of

insolvency proceedings commenced in another jurisdiction, with a view to protecting assets of the insolvency estate located in Greece.

Starting proceedings

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

This procedure[2] is available through the electronic platform operated by the Special Secretariat for the Management of Private Debt, for debts to credit or financial institutions (including securitisation special purpose companies and servicing companies appointed as servicers), the State or social security funds, or both, and is initiated on application of the debtor or any of the above qualifying creditors.

The procedure is not available if the total amount of debts to creditors of the above categories is equal to or less than €10,000 in aggregate. Furthermore, the procedure is not available if the debtor is already subject to insolvency proceedings or has been placed into liquidation (unless the application is submitted by a person being jointly and severally liable with the debtor for the debtor's debts), or if the debtor has sought protection in the context of other proceedings and has not withdrawn from such proceedings, or if the debtor (or, in respect of a debtor being a legal entity, its administrators, directors or managers) has been found guilty of fraud, tax evasion, money laundering, bribery, forgery, embezzlement, smuggling or fraudulent bankruptcy.

The procedure is also not available where the debtor does not fully disclose the assets and liabilities (including bank accounts and liabilities for taxes and duties) of the debtor and the debtor's spouse and dependants (if the debtor is an individual) and detailed financial and tax information (if the debtor is a legal entity), or where there are only performing debts towards the above qualifying creditors and the debtor does not invoke specific events and circumstances resulting in the deterioration of the debtor's financial condition by at least 20 per cent, whether due to a reduction of revenues or an increase of expenses. The information so submitted by the debtor is shared with all creditors participating in the procedure and, in the event that the information is untrue, incomplete or misleading, the debtor is excluded from the procedure and, if a restructuring agreement was achieved with reliance by the creditors on such information, each creditor is entitled to terminate the restructuring agreement and commence or resume enforcement against the debtor for the full amount of its claim together with interest at an annual rate being the aggregate of the European Central Bank (ECB) rate and 5 percentage points. Credit and financial institutions are expressly required by law to provide full information on any deposits or investment products held by the debtor and any guarantor or other obligor for the relevant debts, as well as on any security interests granted for the relevant debts. Furthermore, where the restructuring is intended to include a loan or credit agreement benefiting from the guarantee of the State, the debtor's application for the restructuring agreement must also be submitted by any other obligors under that loan or credit agreement.

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

days of the termination of the out-of-court restructuring procedure. If no such application is submitted, the procedures of the Code of Conduct are terminated.

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

Provided that the criteria set by Articles 21 and 22 of the Insolvency Code (which include, among others, a no worse-off requirement as compared to recoveries in the event of insolvency of the debtor), the state and the social security funds as creditors will consent to the restructuring agreement and will be deemed to consent if they do not notify any objection or a request for rectification within 15 days of them being notified of the restructuring agreement; a deemed consent also applies in respect of any creditor that, based on the no worse-off requirement, should expect no recoveries in event of insolvency of the debtor. For these purposes, consenting creditors that are credit or financial institutions are deemed to accept (for the benefit of the state and social security funds as creditors) that the restructuring will enable the viability of the debtor's business or prevent the debtor's insolvency. It is worth noting that the Insolvency Code was very recently amended to also include specific provisions on the consent requirements in relation to a restructuring agreement in respect of a vulnerable debtor.

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

If, within the above period, no restructuring agreement is reached with the credit or financial institutions, but a restructuring agreement is reached with the State and the social security funds, the debtor is entitled to request the appointment of a mediator in respect of its obligations to credit or financial institutions within 10 days from the above unsuccessful conclusion of the procedure. If no restructuring agreement is reached within 60 days of the request, the procedure is terminated.

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

Rehabilitation agreement

The rehabilitation procedure[3] is a pre-bankruptcy collective procedure intended to preserve, restructure and rehabilitate the debtor's business through the ratification of a rehabilitation agreement, provided that the rehabilitation agreement meets the no worse-off test for the creditors as compared to the rights and recoveries of each creditor in the event of the debtor's insolvency.

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

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

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

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

1. 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;
2. non-consenting creditors' claims are treated more favourably than other creditors' claims that would be of lower ranking in the event of liquidation in bankruptcy;
3. no category of creditors is entitled to receive any value in excess of the total amount of its respective claims; and
4. if the debtor is a very small entity (in accordance with the criteria of Law 4308/2014), the rehabilitation agreement was proposed by the debtor or was concluded with the consent of the debtor.

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

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

When a rehabilitation agreement has been concluded between a debtor and its creditors, the application for ratification of the rehabilitation agreement filed with the court must be supported by a business plan (approved by the parties to the rehabilitation agreement) for a period at least equal to the period during which the rehabilitation agreement is intended to apply (article 43 of the Insolvency Code) and also by the following documents:

1. a copy of the signed rehabilitation agreement;
2. the latest available financial statements of the debtor;
3. the statement of all creditors' claims;[4]
4. an expert report, which must be prepared in accordance with Article 48 of the Insolvency Code by an eligible expert (i.e., registered in the register of experts of Article 65 of the Insolvency Code) selected by the debtor and the consenting creditors, include the expert's opinion as to whether the criteria for ratification of the rehabilitation agreement are met, confirm the accuracy and completeness of the statement of all creditors' claims (item (c) above), including with respect to secured claims, and also attach a list of the debtor's assets; and
5. a certificate of the debtor's outstanding indebtedness towards the State and social security funds, issued not earlier than one month prior to submission to the court of the application for ratification of the rehabilitation agreement.

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

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

The hearing of the application for the ratification of the rehabilitation agreement is set no later than two months after filing. If the debtor is not a contracting party to the agreement, the debtor must be notified at least 20 days prior to the hearing. The court may also order

notification of one or more creditors within a set period before the hearing. Furthermore, a summary of the application must be published in the Bulletin of Judicial Publications within five days of the submission of the application to the court.

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

1. the amendment of the financial terms of the creditors' claims (such as changes with respect to the due dates or the interest rate, the replacement of interest payments with payments out of future profits, or a change in the ranking order of existing security interests), including claims of the state and claims of social security funds;
2. the conversion of debt into equity whether by the issue of new shares or by the issue of convertible bonds;
3. 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;
4. the reduction of the amount of the creditors' claims, on account of principal or interest;
5. the sale of assets of the debtor;
6. the assignment of the administration of the debtor's business to a third party;
7. 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;
8. 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;
9. the provision of bridge financing or new financing for the preservation of the value of the business throughout the rehabilitation procedure or for the implementation of the business plan following rehabilitation;
10. 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;
11. additional payments that must be made if the debtor's financial condition improves; and
12. in respect of debt converted into equity, the replacement of guarantees, credit insurances or similar agreements with put options in favour of the affected creditor for the sale to the relevant guarantor, insurer or other relevant party of the instruments resulting from the conversion of debt into equity, for a period up to two months after the date on which the debt would be due and payable had it not been converted into equity and, if the debt was already due and payable at conversion, for a period up to two months after conversion.

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

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

The rehabilitation agreement may also include termination provisions and may also provide that a breach of its terms operates as a resolutory condition cancelling the rehabilitation agreement. It may also include conditions precedent with respect to all or any of its terms, in which case there must be a longstop date within which any such condition precedent must be satisfied, not extending beyond nine months from the date of ratification of the rehabilitation agreement by the court.

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

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

Upon filing with the court of the application for ratification of the rehabilitation agreement, a stay of enforcement proceedings automatically applies for a period of up to 4 months pending the issue of the judgment of the court on ratification; this automatic stay may only apply once.

If the court judgment on ratification is not issued within the above four months' period, the court may order further preventive and protective measures to protect the debtor against individual enforcement proceedings for a period not exceeding 12 months in aggregate. The court may also:

1. prohibit the termination of any agreements that may be considered critical for the continuation of the debtor's business;
2. permit the refinancing of the debtor without tax or social security clearance; or
3.

appoint a special appointee (among the professionals registered with the Insolvency Managers Register) to undertake specific or all management acts as necessary for the debtor's business.

Such preventive and protective measures against any enforcement proceedings may also be ordered by the court during the negotiations for reaching a rehabilitation agreement for a period not exceeding four months, provided that at least 20 per cent of the creditors participating in the negotiations confirm in writing that they are indeed in negotiations with the debtor with a view to reaching a rehabilitation agreement. These measures may be extended by a new court order for a further two months' period (six months in aggregate) if the application for extension is duly justified, primarily:

1. if there is progress in the negotiations for a rehabilitation agreement;
2. the extension would not unduly and adversely affect the interests of any party; and
3. no application for the placement of the debtor into bankruptcy has been heard by the court.

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

1. it is likely that the debtor will remain viable following the ratification of the rehabilitation agreement;
2. the rehabilitation agreement is not likely to be detrimental to creditors' collective recoveries;
3. 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;
4. 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
5. where the ratification of a rehabilitation agreement is requested by the creditors, the debtor is deemed to consent if it has not notified the court that it objects until the hearing of the creditors' application, provided that objection by the debtor does not prevent ratification if, based on the expert report accompanying the application for ratification, the rehabilitation agreement will not put the debtor in a worse legal or financial position than its legal or financial position without the rehabilitation agreement.

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

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

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

The court's judgment ratifying the rehabilitation agreement may be repealed by the court upon request of any party having legitimate interest, on the grounds of such judgment being based on fraudulent representations (whether by the debtor alone or in collusion with a creditor or a third party) regarding the actual financial condition of the debtor and provided that the resulting loss to the applicant cannot be compensated by a monetary compensation. Upon such repeal by the court, the creditors are automatically released from the terms of the rehabilitation agreement and their claims against the debtor and any guarantors and co-debtors are restored as if the rehabilitation agreement had not been reached (including as to the amount of and security interests for those claims, subject only to any payments that may have been made for such claims in the meantime).

Once ratified by the court, the rehabilitation agreement becomes fully binding on the debtor and on all creditors whose claims are dealt with in the rehabilitation agreement, including those who did not agree to it, with respect to claims that came into existence before the date of issue of the ratification judgment. 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.

A ratified rehabilitation agreement may be amended only once by agreement of the parties being party to the original rehabilitation agreement; such amendment agreement will need to be ratified by the court.

Bankruptcy

Under the Insolvency Code, bankruptcy proceedings commence by a declaration of the court on the application of any creditor, the debtor or the attorney general, if the debtor has ceased payments in the sense that it is generally and permanently unable to pay its debts as they fall due. Cessation of payments is deemed to have occurred if the debtor does not effect payment of due and payable debts towards the state, the social security funds or credit or financial institutions for an amount at least equal to 40 per cent of the total amount of the debtor's due and payable debts for a period of at least six months, and the non-performing debt or debts exceed in aggregate the amount of €30,000.

The competent court is the Multi-Member Court of First Instance (or the magistrates' court in respect of debtors being very small entities) of the place where the debtor has the centre

of its main interests or (in respect of an individual with no business activity) of the place of the debtor's primary residence (in each case, the bankruptcy court).

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

The debtor is obliged to file for bankruptcy within 30 days of the date on which it became generally and permanently unable to repay its debts. In respect of a debtor being a legal entity, the directors of the debtor may be held personally liable for failing to file or delaying in filing for bankruptcy.

The application and its supporting documents are published on the Electronic Solvency Register, and any party with a legitimate interest may have access to the application and its supporting documents.

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

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

The bankruptcy court will reject a bankruptcy application if it is not submitted in accordance with the requirements of the Insolvency Code. The bankruptcy court will also reject a bankruptcy application submitted by a creditor as a substitute for individual enforcement, or for purposes that are inconsistent with the purposes of bankruptcy as a collective enforcement proceeding for insolvent debtors, or by a debtor seeking to evade repayment of its debts. Furthermore, the bankruptcy court will not declare bankruptcy if the assets of the insolvency estate or the debtor's income are not likely to be sufficient to cover the costs of the bankruptcy proceedings, in which case the court will order the registration of the cessation of payments in the Electronic Solvency Register and will also set the date of cessation of payments. The Insolvency Code was very recently amended to include specific provisions for the determination of the insolvency estate in respect of debtors

being individuals, to take into consideration the amount corresponding to reasonable living expenses

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

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

The purpose of bankruptcy is to ensure that the insolvency estate is liquidated for the satisfaction of the creditors' claims in accordance with their respective rights of priority. If the bankruptcy court concludes that the liquidation of the debtor's assets as a whole (or the liquidation of selected operational groups of assets of the debtor) is likely to increase recoveries by creditors, the judgment of the bankruptcy court declaring bankruptcy will also provide for liquidation. The Insolvency Code was very recently amended to provide for more efficient procedures in respect of both the sale of the debtor's assets as a whole (or of any selected operational groups of assets) and the sale of individual assets.

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

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

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

Upon filing and pending declaration of bankruptcy, the court may, at the request of any person having legitimate interest, order any measure deemed necessary to prevent the deterioration of the value of the bankruptcy estate, including a prohibition of disposals of assets, the appointment of a custodian, or a stay of individual enforcement proceedings, provided that:

1. secured creditors may enforce over their security assets for period of nine months after the declaration of bankruptcy, except where the application for the declaration of bankruptcy includes a request for the sale of the business as a whole or in groups

of assets forming operating units and the security assets are part of the business or the operating units (please also refer to the section headed 'Distributional Priorities' above); and

2. enforcement of financial collateral or close-out netting clauses is not affected.

Consequences of placement of the debtor into bankruptcy

Upon declaration of bankruptcy:

1. the debtor is deprived of the power to manage and dispose of the bankruptcy estate, which thereafter is administered by the bankruptcy officer appointed by the court; the bankruptcy officer (syndikos) has the duty to: (i) prepare an inventory of the bankruptcy estate; (ii) invite creditors to announce their claims; (iii) proceed with the sale of the assets of the bankruptcy estate (either as a whole, or in groups of assets or in individual assets, as determined by the court); and (iv) distribute the proceeds of liquidation of the bankruptcy estate in or towards satisfaction of the announced creditors' claims in accordance with their respective priorities in accordance with the Insolvency Code;
2. no contractual or default interest accrues on creditors' claims;
3. any individual enforcement proceedings against the bankruptcy estate are stayed, with the exception of enforcement of financial collateral or close-out arrangements or (unless also stayed in accordance with the Insolvency Code) enforcement by secured creditors over their security assets;
4. specific provisions of the Insolvency Code regulate the termination or continuation of any outstanding employment or other agreements of the bankrupt debtor;
5. in respect of any termination of employment agreements, the validity of the termination notice is not conditional on payment of the termination compensation;
6. specific provisions of the Insolvency Code protect the rights in rem of third parties over assets of the bankruptcy estate (whether based on retention of title or otherwise);
7. creditors may exercise set-off rights, provided that the conditions for the set-off were satisfied before declaration of bankruptcy in respect of the bankrupt debtor; set-off and netting rights under derivatives transactions, settlement systems and financial collateral agreements and close-out netting clauses are permitted if permitted under the law applicable to the relevant transactions; and
8. certain transactions may be subject to clawback (see 'Vulnerable transactions').

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

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

Control of insolvency proceedings

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

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

Specific duties are provided for under the Insolvency Code for the members of the board of directors. Failure to file (or delay in filing) for bankruptcy upon cessation of payments exposes the directors to personal liability. The same applies if bankruptcy results from gross negligence or wilful misconduct of the directors, while the directors are further exposed to criminal liability in the event of loss-making or extraordinarily risky transactions, inappropriate borrowings, misleading or incomplete company books and records, failure to prepare and approve financial statements or inventories as required by law, undue disposals or deterioration of assets, or preferential payments to the detriment of other creditors. Furthermore, the directors may be held personally and criminally liable in the event of tax indebtedness, in accordance with tax legislation.

Special regimes

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

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

Law 4335/2015 (as amended and in force) 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)) and provides for a credible set of four resolution tools (sale of business, bridge institution, asset separation and bail-in) 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. The four resolution tools may be used alone or in combination when the relevant resolution authority considers that:

1. an institution is failing or likely to fail;
2. 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
3. a resolution action is in the public interest.

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

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

Cross-border issues

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

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

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

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

Insolvency metrics

The Greek economy, in unprecedented times of economic crisis from 2008 to 2013, lost cumulatively 26 per cent of its GDP while, during these years, the Greek state faced considerable pressure regarding its budgetary framework and lost its access to the financial markets. The Hellenic Republic concluded three Economic Adjustment Programmes for the provision of Finance Facility, intended to improve Greece's budgetary framework and reverse the economic conditions as the Greek economy.

After a short-lived recovery in 2014, the Greek economy resumed its recession. In 2015 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 was established, under the enhanced surveillance framework according to Regulation (EU) No. 472/2013. The EPPS's main purpose was to safeguard financial stability and continued implementation of structural reforms aiming, among other things, to boost domestic growth, create jobs and modernise the public sector. Reviews under the EPPS were conducted quarterly and progress was linked to debt sustainability measures such as income equivalent returns and reduced interest rates. Based on the 14th Enhanced Surveillance Report of the EU Commission published on 23 May 2022, Greece officially emerged from the EPPS on 20 August 2022, providing greater leeway in the country's economic options in the future.

In June 2018, certain debt relief measures in connection with Greece's loan received under the Second Programme were announced, including a 10-year maturity extension. As a result of the implementation of a series of structural reforms, the disbursement of the first set of policy-contingent debt measures of €1 billion was approved in April 2019. A cash buffer of €33.7 billion (as at 31 March 2019) built up by the Greek government out of ESM loan disbursements and other sources to facilitate the country's access to the international markets was sufficient to cover Greece's future gross financial needs for the subsequent years. The Greek government returned to the international markets following completion of the Third Economic Adjustment Programme. 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.[5]

At the Special European Council (17–21 July 2020), in response to the socioeconomic fallout from the covid-19 pandemic, EU leaders agreed a recovery package and the 2021–2027 budget expected to help the EU to rebuild after the pandemic and to support investment in the green and digital transitions. The recovery package of €1,824.3 billion combines the multiannual financial framework of €1,074.30 billion and an extraordinary recovery effort under the Next Generation EU 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. EU Member States need to implement their national recovery and resilience plans for 2021–2023, to contribute to green and digital transitions, boost growth and jobs creation and reinforce the 'economic and social resilience' of EU countries.[6]

Greece's recovery and resilience plan (Greece 2.0) was approved by the EU Commission on 17 June 2021, on which date the EU Commission adopted a proposal for a Council Implementing Decision to provide €17.8 billion in grants and €12.7 billion in loans to Greece under the Recovery and Resilience Facility.[7]

The recovery and resilience plans of Greece and 11 other EU Member States received the necessary approval of the EU economy and finance ministers at the Economic and Financial Affairs Council meeting of 13 July 2021,[8] opening the way for the payment of the first disbursements to Greece. On 8 April 2022 Greece received the first disbursement of €3.6 billion. Since then, the implementation of the first projects and interventions under the Greece 2.0 plan has already begun and Greece received its second disbursement for €3.56 billion on 19 January 2023. On 16 May 2023, Greece submitted a request to the European Commission for a third disbursement of €1.72 billion.

Following Council approval of Greece's plan on 13 July 2021, Greece's recovery and resilience plan was updated on 8 December 2023 also to introduce a REPowerEU chapter. The total value of the plan amounts to €36.61billion (including the part of the plan that is financed with national resources), out of which €18.22 billion correspond to Recovery and Resilience Facility (RRF) grants and €17.73 billion correspond to RRF loans. The revised plan includes 103 investment streams and 75 reforms, while 38.1 per cent of the plan will support climate objectives and 22.1 per cent of the plan will foster the digital transition. The plan intends to facilitate the decarbonisation of the Greek economy, modernise and digitalise public administration including by improving the tax administration and justice systems, promote the innovation capacity, digital uptake and resilience of key economic sectors, and upgrade health care, education, and active labour market policies. All measures have to be implemented within a tight time frame, as the Regulation establishing the RRF requires all milestones and targets within the national plans to be completed by August 2026. [9] Following a reduced, but still solid economic performance in 2023, gross domestic product (GDP) growth is expected[10] to pick up slightly in 2024 and 2025, supported by export, investments, and private consumption. Headline inflation is set to moderate and fall to 2.1 per cent by 2025. The general government deficit is expected to shrink further thanks to muted expenditure growth, and the public debt ratio is set to remain on a downward path. Overall, GDP is expected to grow by 2.2 per cent in 2024. In 2025, economic growth is projected at 2.3 per cent. Investment is expected to gain further momentum, and become a key contributor to output growth, while household spending is likely to be further supported by a rise in real income.

In 2023, the labour market continued to strengthen on the back of solid economic activity, with the unemployment rate falling by 1.4 percentage points to 11.1 per cent. Despite still high unemployment, vacancy rates are rising, pointing to increasing labour market shortages in some sectors. Employment is projected to rise further, but the increase is likely to be constrained by labour market segmentation, especially due to skill mismatches, and by a low activity rate. Nominal compensation per employees is expected to grow at a less dynamic pace but to remain solid, exceeding inflation, as a result of the recent minimum wage increase, a public sector wage hike and a tightening labour market.

Despite energy prices falling further, the disinflation process came to a temporary halt in mid-2023 due to persistently high food inflation, which was exacerbated by the impact of floods and sticky services prices. HICP inflation[11] averaged 4.2 per cent in 2023 and stood at 3.4 per cent in March 2024, namely, 1 percentage point above the euro area average. Price pressures are set to ease only gradually in the near term due to persistent food inflation and solid wage growth. Consumer prices are expected to increase by 2.8 per cent in 2024 and 2.1 per cent in 2025. Inflation excluding energy and food is set to remain slightly higher, at 3.1 per cent and 2.2 per cent in 2024 and 2025 respectively.

The general government deficit declined from 2.5 per cent of GDP in 2022 to 1.6 per cent in 2023, primarily driven by the phaseout of the measures implemented to mitigate the impact of high energy prices. The general government deficit is expected to decrease further to 0.8 per cent of GDP in 2025 based on unchanged policies. This drop is set to be underpinned by the muted growth of the public wage bill. By contrast, the expected 0.5 percentage points. reduction of the social security contribution rates and the complete elimination of the fixed levy on the self-employed are set to reduce revenue growth.

The public debt-to-GDP ratio declined to 161.9 per cent in 2023 driven both by the increase in nominal GDP and the surplus of the primary balance. The ratio is expected to fall further to 153.9 per cent of GDP in 2024 and 149.3 per cent in 2025, helped by increasing primary surpluses, nominal growth and stock-flow adjustments related among others to the considerable proceeds from the Egnatia and Attiki Odos road concessions.

The fiscal outlook remains subject to risks. Downside risks stem from pending legal cases, most notably the litigation cases against the public properties company ETAD. Also, with the increasing minimum wage, wage pressures are building up in the public sector. On the upside, revenues could turn out higher than currently forecast due to the measures that aim to improve tax compliance.

The most recent long-term credit ratings assigned to Greece are BBB- (Stable) by Fitch (31 May 2024)[12], Ba1 (Stable) by Moody's (15 September 2023)[13], BBB- (Positive) by S&P (19 April 2024)[14] and BBB (low) (Stable) by Morningstar DBRS (8 September 2023).[15]

Plenary insolvency proceedings

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

Voluntary restructuring arrangements have been concluded during the last decade, involving multinational groups with a Greek subsidiary, Greek project companies within project finance schemes, Greek corporates, and small and medium-sized enterprises (SMEs). In all these cases, those voluntary restructuring arrangements have been entered into 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.

Ancillary insolvency proceedings

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

Outlook and conclusions

The transposition of the BRRD into Greek law in 2015, the enactment of Law 4354/2015 on the sale and transfer and servicing of bank loan and credit receivables, the enactment of the Insolvency Code in 2020 and several amendments of the Code of Civil Procedure are critical reforms enacted during the previous years.

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

Law 4649/2019, enacted in December 2019 further to the EU Commission Decision C(2019)7309 (October 2019), and amended and supplemented in July 2021 further to the EU Decision C(2021)2545 (April 2021), has introduced the Hercules Asset Protection Scheme (HAPS) for the guarantee of the Hellenic Republic for senior notes issued in the context of securitisation transactions originated by credit institutions. HAPS has facilitated and expedited the reduction of non-performing exposures of Greek systemic banks, with the notes guaranteed by the state. Secondary sale transactions for segments of receivables included in HAPS portfolios have already been concluded and the trend will continue. It is expected that HAPS transactions will also be available for non-systemic Greek banks. Law 4649/2019 was amended in 2020, 2021 and 2023 with the approval of the European Commission (Initial Decision dated 10 October 2019 C(2019)7309 and Extension Decision dated 9 April 2021 C(2021)2545 and Reintroducing Decision dated 28 November 2023 C(2023)8034) and the ECB. Several transactions for very large portfolios of bank loan and credit receivables have been concluded or are in the course of being concluded with the benefit of HAPS, thus resulting in a more efficient and expedient disposal of large legacy portfolios. HAPS, as re-introduced by Law 5072/2023 amending Law 4649/2019 further to the Decision of the European Commission dated 28 November

2023 C(2023)8034, is now available for guarantees by the Greek State up to the aggregate amount of €2 billion (as that amount may be increased with the prior approval of the European Commission), if the request for the granting of the Greek state guarantee is submitted until 31 December 2024.

Another interesting development is the passing of Law 5072/2023 (effective from 4 December 2023), which (among others) transposes into Greek law Directive (EU) 2021/2167 of the European Parliament and of the Council dated 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU. Pursuant to Law 5072/2023, the servicing of receivables from loan and credit facilities granted by credit or financial institutions must be undertaken exclusively by credit servicers being:

1. servicing companies already licensed by the Bank of Greece under the previous regime of Law 4354/2014 until 29 June 2024;
2. servicing companies licensed the Bank of Greece in accordance with Article 8 of Greek Law 5072/2023; or
3. solely for the servicing of non-performing credit receivables and subject to prior notification to the Bank of Greece, credit servicers having their registered offices in another Member State and licensed by the competent authority of that Member State.

Law 5072/2023 also provides that the license of the Bank of Greece may (subject to certain additional criteria being met) also allow a credit servicer to refinance loan or credit receivables serviced by the credit servicer or another credit servicer. Article 115 of Law 5072/2023 provides that a licensed credit servicer is fully empowered (in the capacity of a non-beneficiary litigant) to conduct court and enforcement proceedings in the name and on behalf of a credit purchaser.

Endnotes

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

2 Articles 5–30 of the Insolvency Code. ^ Back to section

3 Articles 31–64 of the Insolvency Code. ^ Back to section

4 Required by Article 34 of the Insolvency Code. ^ Back to section

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

6 https://www.consilium.europa.eu/en/policies/eu-recovery-plan/. ^ Back to section

7 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3022. ^ Back to section

8 https://www.europeansources.info/record/economic-and-financial-affairs-council-13-july-2021/. ^ Back to section

9 https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility/coun ^ Back to section

10 https://economy-finance.ec.europa.eu/economic-surveillance-eu-economies/greece/economic-forecast-greece ^ Back to section

11 The Harmonized Index of Consumer Prices (HICP) is a measure of inflation in the European Union (EU). It reflects change over time in the prices paid by households for a representative basket of goods and services. ^ Back to section

12 https://www.fitchratings.com/research/sovereigns/fitch-affirms-greece-at-bbb-outlook-stable-31-05-2024. ^ Back to section

13 https://tradingeconomics.com/greece/rating. ^ Back to section

14 Ibid. ^ Back to section

15 Ibid. ^ Back to section

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