Business Reorganisation Assessment

Greece

European Bank
for Reconstruction and Development

Special thanks to:

Bazinas Law Firm

Potamitis Vekris Law Firm

Zepos & Yannopoulos Law Firm

Part A

General Information

Macro Data

10.711	3.8%	US$ 19,670	€ Euro – EUR	22%	0.2%	16.6%
Population (million)[1]	GDP growth rate[1]	GDP per capita[1]	Currency	Corporate tax rate[2]	Inflation rate[1]	Unemployment rate[1]

Insolvency Legislation

The primary legislative text governing insolvency and restructuring proceedings for legal entities, entrepreneurs and consumers in Greece as of 1 June 2021 is the law entitled the **Debt Settlement and Facilitation of a Second Chance** (Law No. 4738/2020, as published in the Official Gazette 207/A/27-10-2020) (the Insolvency Law)[3]. The Insolvency Law creates a unified legal framework to increase the effectiveness of restructuring, insolvency and debt discharge proceedings and to shorten their relevant timelines through the simplification of procedural requirements and the implementation of a central electronic case management system for insolvency. Extensive secondary legislation has been introduced including, for example, the Ministerial Decision 26400 (Official Gazette 865/B/5-3-2021) which provides clarification on the content of expert reports required for ratification of a rehabilitation agreement with the involvement of the debtor under Article 48 of the Insolvency Law.

The Insolvency Law transposes **Directive (EU) 2019/1023** (the Restructuring Directive) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

Insolvency Data

Data on the number of insolvency proceedings based on the previous legislation in force (the 2002 Bankruptcy Code) can be accessed on the web site of the **Hellenic Statistical Authority**. In 2017, 114 insolvency cases were declared by first instance district courts in Greece, with 82 in 2018 and 63 in 2019. The report for 2020 has not yet been released. This data does not include any information on reorganisation-type proceedings. In May 2021, the Hellenic Statistical Authority released a **press release**[4] announcing that in the future, trimestral reports on insolvency cases will be published. The same press release mentioned that for the first quarter of 2020 there were six declared insolvency cases, while for the first quarter of 2021 there were seven declared insolvency cases. Given that new insolvency proceedings are supported by an electronic platform, it is expected that data on insolvency proceedings will become more comprehensive. In line with the requirements of the Restructuring Directive, as of March 2021 data on pre-insolvency rehabilitation procedures and insolvency cases is available the **Electronic Insolvency and Reorganisation Register**.

The Electronic Insolvency and Reorganisation Register is public and available free of charge. According to data from the register, from 31 March 2021 to 27 September 2021, there were 21 filings for insolvent liquidation, 20 filings for preventive measures prior to the filing for approval of a pre-insolvency rehabilitation plan, 1 decision on preventive measures prior to the filing for approval of a pre-insolvency rehabilitation plan, and 13 filings for approval of a pre-insolvency rehabilitation plan.

Data on the use of out-of-court debt settlement mechanism is available **here**.

[1] **IMF – Source as of July 2021:** www.imf.org/en/Countries/GRC

[2] **PWC – Source as of March 2021:** www.taxsummaries.pwc.com/greece/corporate/taxes-on-corporate-income

[3] The Assessment Questionnaire and economy results for Greece are based on the previous legislation in force (the 2002 Bankruptcy Code). The special administration procedure included in Law No. 4469/2017, which was a popular means of selling a business in financial difficulties as a going concern free from liabilities has, following the entry into force of the Insolvency Law, been incorporated to a substantial extent into the sale of a business or part of the business of an insolvent debtor as a going concern (Article 160 of the new Insolvency Law).

[4] Press Release Demographic Events of Enterprises Registrations and Bankruptcies 1st Quarter 2021

Company Information

The Greek company law framework is governed mainly by the Civil Code and the Civil Procedure Code. The applicable legislation depends on the legal form of the corporate entity: **Law No. 4548/2018** as published in the Official Gazette 104/A/13-06-2018 applies to societies anonyme), **Law No. 3190/1955** as published in the Official Gazette 91/A/16-4-1955 applies to limited liability companies); and **Law No. 4072/2012** as published in the Official Gazette 86/A/11-4-2012 applies to partnerships, joint ventures and private companies).

The General Electronic Commercial Registry (GEMH) gathers and centralises individual (fragmented) registries for all legal forms of companies. The website enables users to search for registered entities free of charge. However, it does not include data on whether insolvency proceedings have been commenced with respect to a company.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency courts are courts of general jurisdiction (first instance district courts and magistrates' courts for insolvencies of small size) and the competency of the court is established based on the location of the debtor's legal seat of operations in the case of legal entities or the main residence of an individual i.e., within the territorial jurisdiction of the relevant district court or magistrates' court. The insolvency cases before the courts of general jurisdiction follow a special procedure under the Code of Civil Procedure. The regulatory authorities for insolvency proceedings are the Ministry of Justice and the Ministry of Finance. Insolvency practitioners must be registered on a list maintained by the Ministry of Justice and published on the **Ministry's website**. Both natural and legal persons with appropriate professional qualifications and that have passed a specialised examination may be appointed as insolvency practitioners.

Applications for out-of-court settlements deriving from **Law No. 4469/2017** (as published in the Official Gazette 62/A/3-5-2017) must be filed digitally with the **Special Secretariat for the Administration of Private Debt** through an electronic platform. However, the last day that an application could be filed with the original electronic platform under this legislation was 20 April 2020. Following the entry into force of the Insolvency Law, a new out-of-court workout platform has been established under the Secretariat. This new platform is limited to debt write-offs and rescheduling of bank and public debt only (either on a multilateral or a bilateral basis).

The Special Secretariat for Private Debt Management (Special Secretariat), which is an independent public service, operates under the Government's Council for Private Debt Management, and is supervised by the Ministry of Finance. The Special Secretariat has the following responsibilities: it assists in the planning and implementation of the national strategy for the organisation of an integrated mechanism for the effective management of private debt and the avoidance of over-indebtedness; it helps to formulate the strategy for dealing with the problem of non-performing private loans and management of private debt in general; and it develops guidance and proposals for the improvement of existing legislation governing the management of private debt.

A register of experts for the out-of-court debt settlement mechanism (described below) administered by the Special Secretariat was introduced by **Law No. 4469/2017** (as published in the Official Gazette 62/A/3-5-2017). Experts admitted to the register are responsible for: assessing the viability of the applicant; preparing a debt restructuring plan; and verifying claims, the existence or amount of which is disputed by the debtor or by participating creditors.

Continue to Part B →

Part B

Business Reorganisation

Are there any incentives for extrajudicial voluntary agreements (workouts)?

No, however Article 171 provides for certain tax exemptions that apply to all Insolvency Law procedures. For example, with respect to an out-of-court settlement procedure, income generated as a result of the voluntary write-off of a debtor's debt is not considered a gift or otherwise a taxable income, and the agreement enjoys an exemption from otherwise applicable stamp duties or levies. Also, Part 1 of the Insolvency Law (Prevention of Insolvency) establishes a procedure for the access of debtors to clear and transparent early warning tools, which can identify circumstances that may lead to ¬insolvency, as well as to inform the debtor of the need to take immediate steps, pursuant to the Restructuring Directive.

What is the nature and purpose of the reorganisation procedure?

There are two types of reorganisation procedures under the Insolvency Law: the out-of-court debt settlement procedure (Εξωδικαστικός Μηχανισμός Ρύθμισης Οφειλών) and the pre-insolvency business rehabilitation procedure (Διαδικασία Εξυγίανσης), in each case as described below. **Click here** for an overview of these procedures.

Out-of-court debt settlement mechanism

This is an out-of-court confidential settlement mechanism which aims to provide participating creditors with an operational environment for formulating proposals for settling the debtor's debts and avoiding the risk of insolvency. This mechanism is available at the request of the debtor or its creditors (Article 5). The procedure is limited to debt write-off and rescheduling only and is confidential. Participating creditors must be financial institutions, the tax authorities and/or pension funds. Furthermore, tax and public creditors are bound by the settlement agreement, even if they did not participate in the negotiation process, subject to specific conditions provided in the law (Articles 21 and 22).

If the out-of-court confidential settlement mechanism is not successful, meaning that offer to provide a plan is rejected or the amended obligations under the plan are not met, initiation of other pre-insolvency or insolvency proceedings is not automatic, but is highly likely.

Pre-insolvency rehabilitation procedure

This is a collective pre-insolvency procedure designed to maintain, utilise, restructure and restore a debtor business by ratifying a rehabilitation agreement. The procedure provides for the restructuring of the debtor's assets, liabilities and business, which includes potentially the transfer of the business under a mechanism that overcomes resistance from shareholders (Articles 31 and 64).

The procedure is based on the presentation of a pre-packaged rehabilitation plan, negotiated between the debtor and its creditors out-of-court, to the court for ratification.

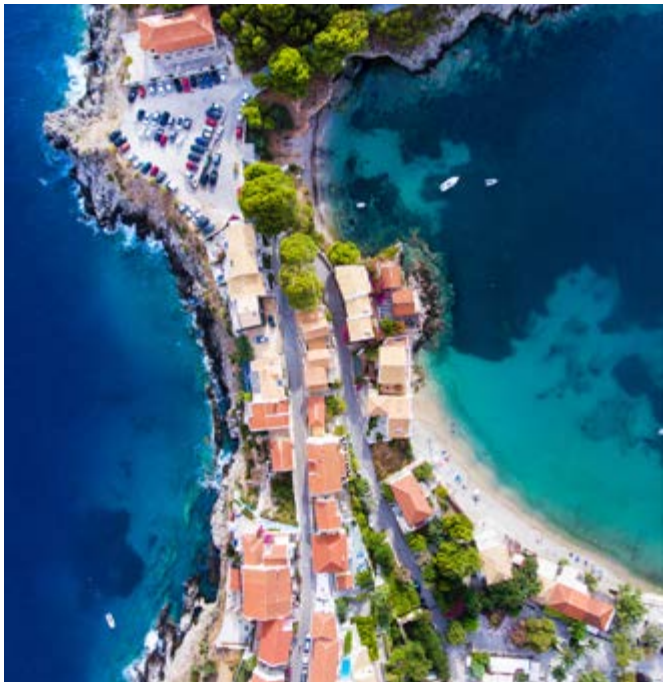
Who can commence the process and what entry conditions apply?

Out-of-court debt settlement mechanism

Individuals or legal entities eligible to be declared insolvent, may apply for an out-of-court settlement of their monetary liabilities towards the Greek State or financial and social security institutions provided they do not fall within certain exclusions (e.g., 90 per cent or more of a debtor's liabilities being owed to a single institution) (Article 7). The procedure may also be initiated by a creditor inviting the debtor to apply for the procedure within 45 days (Article 8). Once the application is made, creditors which are financial institutions should submit proposal for restructuring to the debtor (Article 14).

Pre-insolvency rehabilitation procedure

Any natural or legal person (a debtor) which conducts business activities,¬ has the centre of their main interests in Greece and is in a state of present or threatened impossibility of fulfilling their outstanding financial obligations may apply for this procedure (Article 32). The debtor may also submit an application if there is a likelihood of insolvency which can be alleviated by this procedure.



References to Articles are to Articles of the Insolvency Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**

Is there any court involvement?

Out-of-court debt settlement mechanism

No, out-of-court settlement applications are filed digitally with the Special Secretariat for the Administration of Private Debt through an electronic platform. The debtor or the creditors can initiate the procedure via an application to the platform which can also be used to submit all the necessary documents, including any proof of debts. Furthermore, if the application is submitted by the debtor, the debtor must also present a proposal for the restructuring of its claims.

Pre-insolvency rehabilitation procedure

Yes, a rehabilitation agreement must be ratified by the court through a simplified procedure (Article 41). The application for its ratification by the court is submitted by the debtor or a contracting creditor (Article 44). However, an application for ratification of a rehabilitation agreement may be submitted¬ by any of the parties to the agreement, meaning the debtor and its creditors.

Are there any hybrid procedures?

Yes, the pre-insolvency rehabilitation procedure is a hybrid procedure since the debtor presents to the court for its ratification a rehabilitation plan which has been pre-agreed by majority creditors.

Does the debtor remain in possession of and continue to manage its business?

Out-of-court debt settlement mechanism

Yes, the debtor remains fully in possession of the business and there is no monitoring of the debtor's operations.

Pre-insolvency rehabilitation procedure

In general, yes. However, subject to a request by a party with a legitimate interest and following the submission for ratification of the rehabilitation plan, the court or the president of the court has the discretionary power to appoint a special representative with the power to exercise some or all of the management powers of the debtor (Article 51).

Is there a need to appoint an insolvency practitioner?

Out-of-court debt settlement mechanism

No, there is no need to appoint an insolvency practitioner. However, for 10 days following the submission of settlement proposals by the creditors, the debtor may submit a request for mediation. If this request is accepted by the majority of creditors by value, an accredited mediator may be appointed for entities that meet the definition of a very small entity under Law No. 4308/2014 and in any other case the responsibility may be received by an established mediator, who must have a special training on financial mediation (Article 15).

Pre-insolvency rehabilitation procedure

In general, no. However, subject to a request by a party with a legitimate interest and following the submission for ratification of the rehabilitation plan, the court or the president of the court has the discretionary power to appoint a special representative with the power to exercise some or all of the management powers of the debtor (Article 51).

Is there any applicable stay or moratorium?

Out-of-court debt settlement mechanism

Yes, from the filing of an out-of-court settlement application and up until the termination of the procedure, an automatic moratorium to any enforcement actions and measures against the debtor is imposed on the participating creditors. This includes a stay on secured creditors (Articles 13, 18 and 19). Further, on approval of the settlement agreement, the moratorium continues for the duration of the settlement agreement with respect to parties to that settlement agreement.

Pre-insolvency rehabilitation procedure

Yes, there is an automatic suspension to any enforcement actions and measures against the debtor which applies to all creditors, including secured creditors, from the submission of the rehabilitation agreement to court until the ratification of such agreement (Article 50). Such a suspension cannot exceed four months and is only applied once per debtor. However, in the case of: progress in the discussions among the parties; the extension not harming the interests of any party; and no discussion regarding an insolvency proceeding being initiated, the total duration of the stay may be extended to six months.

The court or its president, on application by anyone having a legitimate interest, or by operation of the law itself, may revoke or amend the relevant provisional measures and order the extension of any provisional measures, but in no case can the duration of the suspension, including the automatic suspension and its renewals or extensions exceed 12 months (Article 52).

The Insolvency Law provides that the moratorium may be imposed by the court prior to the submission of the rehabilitation plan on request of 20 per cent of the participating creditors, as presented to the court by the debtor (Article 53).

Is there any protection for essential contracts and to prevent termination of contracts by third parties?

Out-of-court debt settlement mechanism

There are no special protections in the Insolvency Law for essential contracts or against third party termination clauses due to the debtor entering this procedure. However, the law provides that an application to initiate an out-of-court settlement should not constitute a ground for termination of long-term contracts (Article 13).

Pre-insolvency rehabilitation procedure

Despite the requirements of Article 7(5) of the Restructuring Directive, there is no relevant provision in the Insolvency Law prohibiting third-party termination clauses due to the debtor entering into the procedure. However, the court may prohibit the termination of¬ contracts which it considers essential for the operation of the business until the rehabilitation agreement has been ratified or rejected (Article 51).

Is new financing protected by law?

Out-of-court debt settlement mechanism

No, the procedure is limited to debt write-off and debt rescheduling and there are no provisions governing new financing for the debtor's business.

Pre-insolvency rehabilitation procedure

Yes, the priority status of interim and/or new financing is protected by the legislation. Interim financing refers to the interim period from commencement of proceedings until ratification of the rehabilitation plan and new financing refers to post-ratification financing. Both must be referred to in the rehabilitation agreement. Creditors that provide interim and/or new financing enjoy priority over unsecured creditors and rank equally (pari passu) with public creditors that enjoy a general privilege (Article 167.2(a)).

Does the law recognise separate classes of creditors for voting purposes?

Out-of-court debt settlement procedure

Yes, the Insolvency Law distinguishes between financial institution creditors and secured creditors for voting purposes (Article 14). The two classes vote separately. There is no option of further classes.

Pre-insolvency rehabilitation procedure

Yes, the Insolvency Law recognises two classes of creditors for voting purposes: secured and unsecured (Article 34). There is no option of further classes.

What are the majorities required to approve a reorganisation plan?

Out-of-court debt settlement mechanism

The approval of the debt settlement agreement, as proposed by the credit/financial institutional creditors, requires the consent of the debtor, the majority in value of the financial/credit institutional creditors and at least the majority in value of the participating secured creditors is required for the debt settlement agreement to be executed (Article 14). Secured creditors which are in the minority can be crammed down, provided that the "best interest of creditors" principle is fulfilled whereby none of the non-consenting creditors will be in a worse position under the settlement than in insolvent liquidation. However, note that this is a debt write-off or rescheduling type of procedure only.

Pre-insolvency rehabilitation procedure

A rehabilitation agreement must be approved by both the debtor and creditors representing at least 50 per cent of the debtors' total secured liabilities, as well as creditors representing at least 50 per cent of the debtors' other (unsecured) liabilities (Article 34). An agreement can be imposed even without the consent of the debtor in certain circumstances, including where the debtor is in a general and permanent state of cessation of payments. Cross-class cram down of secured creditors by unsecured creditors is not possible.

Cross-class cram down of unsecured creditors is possible but can only be achieved where the rehabilitation agreement has been approved by more than 60 per cent of the total creditors' claims (secured and unsecured) and 50 per cent or more of the secured creditors' claims (Articles 34 and 54). Pursuant to the so-called "relative priority rule", for cross-class cram down to take effect, any dissenting voting classes of affected creditors should be treated at least as favourably as any other class of the same rank and more favourably than any junior class. There are a number of additional conditions for ratification of the agreement by the court, including the "best interest of creditors" rule that none of the non-consenting creditors will be in a worse position under the rehabilitation plan than in insolvent liquidation (Article 31).

Who does the reorganisation plan bind?

Out-of-court debt settlement mechanism

All participating financial institutions that operate legally in Greece and are members of the **Teiresias S.A.** credit reporting system participate in the platform established by the Special Secretariat for the Administration of Private Debt. The Teiresias S.A. system retains an Economic Behaviour Data Archive for the purpose of providing access to accurate financial behaviour information which helps to protect commercial credit and reduce bad debts for the benefit of the banking system and traders.

Furthermore, tax and public creditors are bound by the settlement agreement, even if they did not participate in the negotiation process, subject to specific conditions provided in the law (Articles 21 and 22).

Pre-insolvency rehabilitation procedure

An approved court rehabilitation agreement is binding on all creditors whose claims are covered by the rehabilitation agreement, including dissenting creditors (Article 60). Cross-class cram down of unsecured claims only can be achieved where the rehabilitation agreement has been approved by more than 60 per cent of the total creditors' claims (secured and unsecured) and more than 50 per cent of the secured creditors' claims (Article 54). Dissenting secured creditors can be crammed down subject to the "best interest of creditors" rule and the relative priority rule described above.

What is the timeframe for the reorganisation procedure and any moratorium?

Out-of-court debt settlement mechanism

The maximum duration of any proceeding is two months from the submission of the application; however, this may be extended by the tax authorities or the social security authorities for an additional 15 days. If a debt settlement agreement is not executed within this period, the proceeding is closed on the basis it has been unsuccessful (Article 16).

Pre-insolvency rehabilitation procedure

As a result, a pre-insolvency rehabilitation procedure cannot last for more that twelve months, being the maximum time period of the moratorium.

A moratorium is automatically applicable from the submission of the rehabilitation agreement to court until the ratification of such agreement. The maximum duration of a moratorium is twelve months (Article 50 and 52).

Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

Yes, in 2010 by virtue of **Law No. 3858/2010** (Official Gazette 102/A/1-7-2010). As a member of the European Union Greece is also subject to **Regulation (EU) 2015/848** of the European Parliament and of the Council on insolvency proceedings which governs the coordination of insolvency proceedings within the EU.

Special features/observations:

- The pre-insolvency rehabilitation procedure complies with the Restructuring Directive and includes a cross-class cram down mechanism with respect to unsecured creditors, as well as other features of the Directive including protection for new financing and essential contracts. The rehabilitation plan can be approved solely by creditors, except for entities that meet the definition of a very small entity under Law No. 4308/2014, where it must be approved by the debtor as well.
- Greece has a specific out-of-court debt settlement procedure which includes debts owed to the Greek State and social security institutions, as well as financial creditors. Tax and public creditors are bound by the settlement agreement, even if they did not participate in the negotiation process, subject to specific conditions provided in the Insolvency Law.

Overview of Greek Business Reorganisation Procedures*

* This provides a high-level overview of business reorganisation procedures. See the commentary in this profile and the Insolvency Law for further details, including with respect to any applicable moratoria and creditor voting thresholds.

** Participating creditors must be financial institutions, the tax authorities and/or pension funds.

Contact

Catherine Bridge Zoller
Senior Counsel
Legal Transition Team
European Bank for Reconstruction & Development
LTTRestructuring@ebrd.com

13472/0921 Designed by Red Rocket Graphic Design | **www.redrocket.co.uk**

European Bank
for Reconstruction and Development