Update on the new debt settlement and insolvency framework for small businesses and households

A Code for debt settlement and providing a second chance

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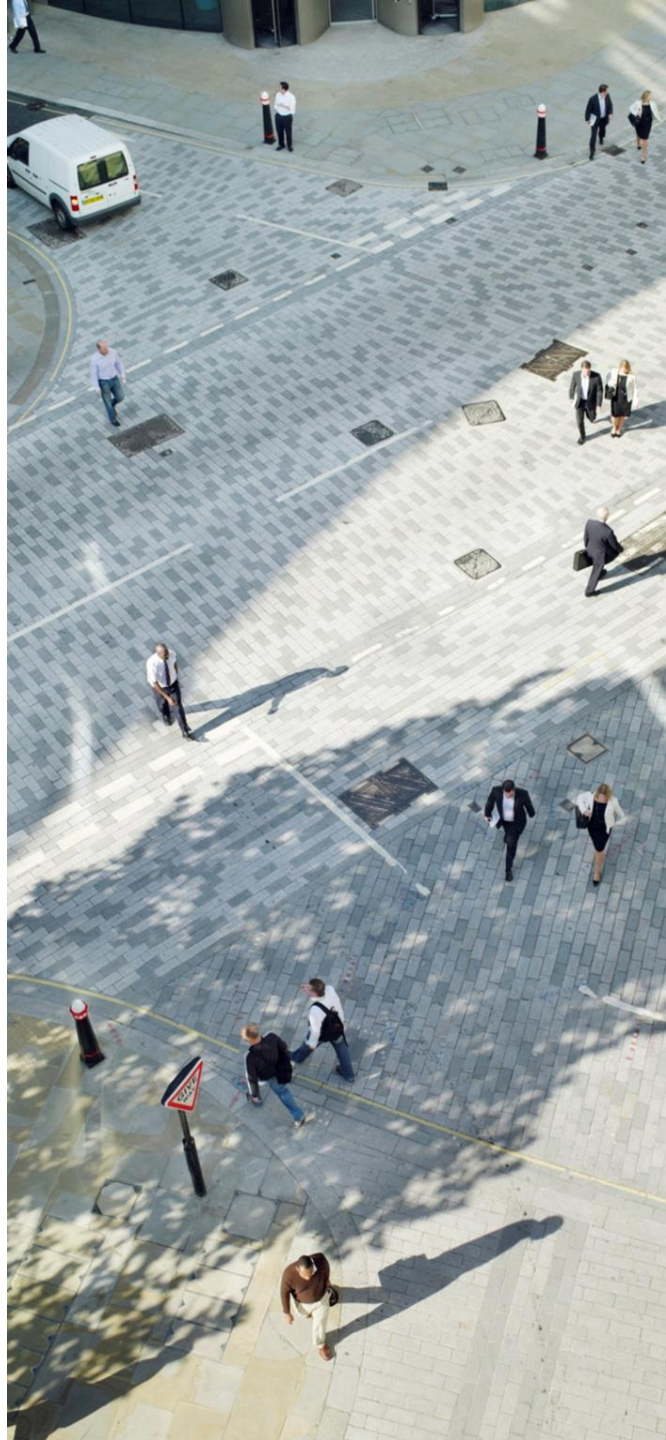

Outline of the Code for debt settlement and providing a second chance for small businesses and individuals

Code objective

The new insolvency framework, enacted by Law 4738/2020 (Greek Government Gazette A' 207/27.10.2020) introduces a holistic approach to insolvency legislation in Greece and enables households and businesses to settle their debts to the State, social insurance funds, banks, servicers and other private creditors.

Outline of the new insolvency framework for small businesses and individuals and entry into force

The new insolvency framework addresses the following key areas:

1. **Preventive** (pre-insolvency) restructurings through a digitalized-automated Out of Court Work Out (OCW) process, including a subsidy mechanism for debt repayment.

2. **Bankruptcy proceedings** (with a small materiality bankruptcy process designed and tailored to address the debtors falling within its perimeter based on the value of the bankruptcy estate).

3. **Dedicated provisions for vulnerable individual debtors** who may benefit from the social policies framework provided in the frame such as the Sale and Leaseback Organization (SLBO) and primary residence state subsidy. In particular, SLBO shall acquire the primary residence of certain category of debtors and implement a lease back mechanism. SLBO will be a legal entity of private law and will be selected following a public concession tender process.

4. The new insolvency framework includes, among others, provisions for the discharge of natural persons **("second chance")** from their debts under specific conditions to be met.

The new insolvency framework was initially envisaged to enter into force on 1.1.2021 but following the enactment of Law 4764/2020 (Greek Government Gazette A' 256 23/12/2020), the provisions applicable to small businesses and households regulating the OCW mechanism, ordinary bankruptcy for individuals, small materiality bankruptcies and the vulnerable debtors framework entered into force as of 1.6.2021, whereas the respective provisions on pre-pack rehabilitation and bankruptcy processes (with the exclusion of small materiality bankruptcies) have already entered into force as of 1.3.2021.

The present newsletter follows up our newsletter on corporate insolvency issued on January.

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Key framework processes for small businesses and households

Key framework processes for small materiality cases and households

Preventive to Bankruptcy Processes

	Processes	Description
Preventive (pre-insolvency)	Out of Court Workout	• The OCW is a set of rules that govern the access to an electronic platform by debtors and a limited group of creditors for the purpose of **seeking a debt restructuring**, exchange of information and release of confidential data, formulation of a restructuring offer and the conclusion of a restructuring agreement. • Debtors that meet specific eligibility criteria could receive **state subsidy** for repayment of debt secured by their Primary Residence.
Bankruptcy proceedings	Ordinary Bankruptcy Process	• Simplification of bankruptcy process with **reduced Court involvement** and implementation through **e-auction** platform.
	Small Materiality (simplified) Bankruptcy Process	• The simplified process tailored for addressing small materiality cases, which will **run through the lower courts** (District Civil Court -"Eirinodikio") and will utilise the **Electronic Solvency Registry**. Targeted debtor audience consists of consumers, entrepreneurs and smaller enterprises.
Social Policies for vulnerable debtors	Primary Residence Framework – Sales and Leaseback Organization & State Subsidy	• Enables the transfer of primary residence to the **Sales and Leaseback Organization (SLBO)** in case of a debtor bankruptcy declaration by the Bankruptcy court or commencement of enforcement process against the debtor's estate by creditors secured with a mortgage pre-notation. • Option to **lease back for a period of up to 12 years** with rent subsidisation for vulnerable debtors.

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Analysis of each process

3.1 Out of court workout

3.1.1. Outline of key principles & process steps

Perimeter: Every individual may apply in order to achieve an out-of-court settlement of debts with **(a) financial institutions (including servicers), (b) the Greek State** and **(c) Social Security Institutions.**

Debts towards **third parties are not restructured** under the new OCW process. The new OCW process entered into effect as of 1.6.2021

Key principles

- Settlement of debts to financial institutions, Greek State and Social Security institutions, **no restructuring of other creditors**;
- Debtors with **>90%** to one financial institution are excluded;
- Digital application submitted to the **electronic platform** by the debtor (creditors may also initiate the process or have the discretion not to submit a restructuring proposal);
- **Consent criteria** – 60% of financial institutions including at least 40% of secured creditors;
- **Automatic acceptance** of the agreement by the State and Social Security Institutions if certain criteria are met;
- **No requirement** for Court ratification;
- Process duration of **2 months** (subject to 15 days extension);
- **Pending** ministerial decisions for certain process steps;
- Following filing and during negotiations, financial institutions will **stay any Code of Conduct action**, or any enforcement action unless there is an auction scheduled within 3 months after the application submission;
- **Tax** and cost **incentives**.

Process steps

	Application Process	Financial Institutions	State & Social Security Institutions	Primary Residence State Subsidy
1	Every **individual** can apply	**Participation & Cooperation** to offer common solution	**Notified** upon agreement of creditors & debtors	• Debtors with restructured debts or **<90dpd** to all debts • State subsidy up **to 5 years**
2	**Eligibility Criteria:** • **< 90% owed** to one creditor • Total Debt **> 10k**	**Agreement Acceptance** • **> 60%** of all creditors • **> 40%** secured debt	**Automatic acceptance:** **claim <1.5mil**, solution calculated automatically, repayment **<240 months**	**Criteria:** • Debt to financial institutions **>20k** • Loan secured by primary residence **<135k** or **<215k** for families with children • Denouncement **<1 year** from application • Vulnerable Debtors **(art.3 L.4472/2017)**
3	**Electronic Platform**	**Standstill of Enforcement Action** from financial institutions	**Standstill of Enforcement Action** in case of acceptance	
4	**Content of Application** (details, reason, financial situation, asset, liens etc.)	**Agreement:** Institutions may not submit proposal if the debtor is non-viable	**Insolvency Practitioner & Bilateral agreements** for some restructurings not meeting the above criteria	**Subsidy Amount & installment percentage:** • **70€** for one person, **35€** for each additional member, **210€** maximum • **80%**for <90dpd, **60%** for >90dpd, **40%** for >90dpd
5	**Family members** co submit the application	**Mediator Contribution:** The applicant can submit within 10 days from the proposal receipt	Creditors have **termination rights** if No adherence to debt restructuring terms	

3.1.2. Out of Court workout advantages

Advantages

- Digitally supported process through an electronic platform;
- Quick resolution of the restructuring agreement with no Court involvement;
- Binding restructuring agreement to all other non consenting financial institutions (provided that they are not placed in a worse position than they would have been in the case of liquidation);
- Possibility of debt restructuring over Greek State and Social Security Institutions liabilities, expected to be facilitated by the deemed consent framework;
- The process could be the restructuring tool for cases which do not include restructuring of other creditors;
- Availability of state subsidy within the defined perimeter of eligible debtors;
- Tax and cost incentives.

3.1.3. Ministerial Decisions

Theme	Description
Process, coordination & mathematical tool (Art. 71, par.2)	• Business and technical issues regarding negotiation/restructuring process as well as deadlines are specified by the Ministerial Decision under no. 67360 (Government Gazette Bulletin B' 2499/10.06.2021). Indicative examples: ○ Procedure of application submission and error correction mechanism, application deletion and resubmission in the electronic platform ○ Specification of criteria regarding accepting application submission by performing debtors with deterioration of financial situation due to either reduction of his income or increase of his expenses ○ Addition of existing deadlines in specific cases and procedure for managing requests for extension of deadlines ○ Issues related to the communication and coordination of financial institutions, the State and the Social Security Institutions regarding their participation in the debt restructuring process through the electronic platform ○ Provision, at the discretion of the financial institutions, the use of a mathematical tool to determine repayment amount, installments, repayment period per creditor taking into account, capacity to pay, liquidation value of debtor 's assets, no worse off etc. Calculations will take into consideration debtor's claim per creditor, debtor's assets and income etc.
Viability, minimum recovery & bilateral agreements (Art. 71, par. 3)	• The viability or solvency of the debtor, as well as process details for bilateral restructuring are specified by the Ministerial Decision under no. 66468 (Government Gazette Bulletin B' 2484/10.06.2021. • More specifically: ○ Rules and calculations regarding viability or solvency of the debtor for multilateral and bilateral (only for State and Social Security Institutions) restructuring agreements ○ Bilateral restructuring agreement process details, such as the eligibility perimeter and specific criteria for bilateral solutions, error correction mechanism, procedure for managing requests for extension of deadlines etc. as well as the results stemming from bilateral contracts
e-platform business & technical specifications Art.71, par. 4	• Business specifications regarding electronic platform will be specified by a Ministerial Decision
Financial Institutions as participating creditors (Art. 71, par.5)	• The terms in which financial institutions should agree in order to participate in OCW process will be specified by a Ministerial Decision. Indicative examples: ○ Communication, negotiation, approval process & data confidentiality ○ Acknowledgement that restructuring agreement apply to all participating creditors, including not consenting, also taking into account no worse-off criterion ○ Definition of the criteria for the Co-ordinator of Creditors role in each application ○ Outline of the main terms, calculation methodology (algorithm) and parameterization for the automated Counter-Proposal of Creditors
Primary residence subsidy (Art. 71, par. 6, 7)	• Application process regarding State subsidy, responsible entity for subsidy approval, etc. will be specified by a Ministerial Decision

3.2 Ordinary bankruptcy process for individual debtors

Outline of key principles & process steps

Characteristics of potential debtors **falling within this process**

- Applies to debtors with **property/assets** value of >350k

Key principles

- Potential for **higher recoveries through the e-auction** process
- **Minimization of court** involvement
- **Speed and simplification** of the process
- **Tax incentives**
- Debtor must be in **cessation of payments.** A presumption is introduced where the debtor has defaulted payments in **excess of 30k towards the Greek State,** Social Security Institutions and financial institutions for a period of **6 months,** where said default is **not less that 40%** of his total outstanding/due debts
- The duration of the bankruptcy process may be **up to 5 years** (with another 2 year extension right)

Milestones

Prerequisites:

- **Cessation** of payments
- Materiality thresholds (**assets>350k**)

Bankruptcy application:

- Filled by debtors or creditors
- The court appoints a **bankruptcy administrator**

Supporting documents:

- Financial statements or tax declarations of last financial year
- Certificates from the competent financial authority for the obligations of the debtor towards the State

Application for primary residence framework:

The qualifying vulnerable debtor shall submit an application within **60 calendar days** for using the primary residence framework/mechanism.

Announcement & Verification of claims:

- Creditors announce their claims within **3 months**
- The claims are verified within the **next 3 months** from the bankruptcy administrator

Public Auction:

- **E-auction** within 30-45 days from the publication of the invitation
- The bidders shall pay a guarantee **30%** of the reserve price, but **> €1,000**
- In case of **auction failure:** perform other auctions or **transfer the assets to the State** if payments are due towards the state

Transfer of assets:

The bidder signs the transfer deed and pays the auction proceeds

Distribution of proceeds

3.3 Small materiality bankruptcy process

Outline of key principles & process steps

Characteristics of **potential debtors falling within this process**

- **Debtors** whose assets are below the threshold **of 350k**;
- **Debtor businesses** qualified as **below the threshold criteria** set for very small entities as defined under Greek Accounting Standards (i.e. Assets <350k, revenue <700k, employees <10)

Key principles

- **Speed and simplification process** through lower Courts with **better and quicker recoveries**
- A **cessation of payments** presumption is introduced where the debtor has defaulted payments in **excess of 30k towards the Greek State**, Social Security Institutions and financial institutions for a period of **6 months**, where said default is **not less that 60% of his total outstanding/due debts**
- **No creditors' assembly**
- **Immediate liquidation** via **e-auction platform** with **minimum reserve price**
- Debtors annual income may be **exempted from Bankruptcy Estate** if his assets value, including primary residence is **less than 100k and exceeds the 10% threshold** of his total debt liabilities
- Payment plan until discharge may be ordered
- The **Bankruptcy administrator** may be selected **by the creditors**
- The declaration of bankruptcy does not affect **the enforcement rights of the secured creditors** for a period of 9 months from the declaration of bankruptcy.

Milestones

Prerequisites:

- **Cessation** of payments
- Materiality thresholds (**assets <350k** or considered very small entity from Greek Accounting Standards)

Bankruptcy application:

- Filled by debtors or creditors if there are no interventions, it can be accepted only after the lapse of 30 days
- The court appoints the **bankruptcy administrator**
- In cases where the debtor's income exceeds the minimum living standard, then the supervising judge may order a payment plan until discharge

Supporting documents:

- Financial statements or tax declarations of last financial year
- Certificates from the competent financial authority for the obligations of the debtor towards the State

Application for primary residence framework:

The qualifying vulnerable debtor shall submit an application within **60 calendar days** for using the primary residence framework/mechanism.

Announcement & Verification of claims:

- Creditors announce their claims within **3 months**
- The claims are verified within the **next 3 months** from the bankruptcy administrator

Public Auction:

- **E-auction** within 30-45 days from the publication of the invitation
- The bidders shall pay a guarantee of **30%** of the reserve price, but **> €1,000**
- In case of **auction failure:** perform other auctions or **transfer the assets to the State or to the debtor** if the latter does not have dues to the State/Social Security Organizations

Transfer of assets:

The bidder signs the transfer deed and pays the auction proceeds

Distribution of proceeds

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Social policies for vulnerable debtors

4.1. Sales and Leaseback Organization– Outline of key principles

Perimeter: The eligible debtor/beneficiaries perimeter for the primary residence framework consists of **individuals who meet the requirements specified in art.3 of L. 4472/2017:**

i. Family income starts from **7k** and increases by 3.5k for each additional member while it **is capped at 21k**

ii. Taxable value of debtor and family's **immovable assets <120k** for single debtors, increased by 15k for each additional member and **capped to 180k.**

iii. Value of deposits or other financial assets of the family **does not exceed the income's criteria limits** adjusted accordingly for the family type.

iv. Deposit interest (as declared in their last annual tax return) **does not exceed the deposit limit for each family type** average annual deposit rate / 100.

Key principles

- Option to **transfer the primary residence** to the SLBO and **lease back** for a period of up to **12 years.**
- Option exercise triggering events are:
  - **a.** **debtor bankruptcy** declared by Bankruptcy court,
  - **b.** **commencement of enforcement** process against the debtor estate by creditors
- At any time of the lease period, the **beneficiary may buy back their residence**
- Vulnerable debtors, will be **eligible to receive a lease subsidy from the State** (i.e. 70€ for one person, 35€ for each additional member, 210€ maximum).

Process steps

Option Exercise	The Sales and Leaseback Organization acquires the residence if: • It pays the acquisition fee **no later than 5 days** before the auction or in case of bankruptcy **until the last business day of the sixth month** following the declaration of bankruptcy • **Co-owners accept the transfer** of their ownership right
Sales and Leaseback Organization	• The Lease and buy-back concessionaire will be selected following a public tender process to be **organised by the Greek State** and specific rules and terms regarding its function, operation and financing will be set out in secondary legislative acts to be issued.
Acquisition price	• **Paid by Sales and Leaseback Organization** either to the bankruptcy administrator or the auctioneer • Equal to the **commercial value** based on certified valuation
Lease & Buy back	• **At any time of the lease** period, the beneficiary may buy back their residence at a price that must reflect the commercial value of the asset plus any pending installments of the leasing period
Primary Residence Subsidy	• **Vulnerable debtors**, will be eligible to receive a lease subsidy from the State

4.2. Pending Ministerial Decisions

Theme	Description
Sales and Leaseback Organization responsibilities (Art. 225, par.1)	• Specific obligations and responsibilities are imposed on the Sales and Leaseback Organization e.g. the duration of the transfer, the maintenance of the acquired real estate, recruitment of servicer (N.4354/2015), criteria and minimum requirements of servicer selection, terms for servicer replacement if required, provision of state guarantee if applicable etc. will be specified by a Ministerial Decision
Primary Residence Transferring Process (Art. 225, par.2)	• Process of property (primary residence) transferring to Sales and Leaseback Organization will be specified by a Ministerial Decision
Monthly lease and buy back price (Art. 225, par. 3)	• Monthly lease and buy back price will be specified by a Ministerial Decision • With respect to the buy back consideration, it must reflect/factor-in the commercial value of the asset at the time when the right will be exercised, whereas the Organization must also be in position to participate in any capital gain attributed to such asset.
Primary Residence Subsidy (Art. 225, par. 4)	• Clarifications regarding provision of State Subsidy to vulnerable debtors, taking into consideration L. 4472/2017 (art.3) will be specified by a Ministerial Decision
Vulnerable Certificate (Art. 225, par. 5)	• Responsible entity/department for examination of debtor vulnerability, process for provision of vulnerable certificate etc. will be specified by a Ministerial Decision

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Second chance

Key aspects

- By way of general rule, the lapse of five (5) years from the declaration of bankruptcy, brings the relevant process into an end unless otherwise is explicitly provided in the Code.
- The above general rule is qualified for debtors-natural persons, for which the automatic debt discharge shall not be contingent to the liquidation progress and may be after 3 years from the bankruptcy declaration. Furthermore, debtors whose bankruptcy declaration caused the loss of their primary residence or assets of value equal to at least 10% of their total debts and no less than 100k (which were not acquired 12 months prior the bankruptcy application), are discharged at the first anniversary from their bankruptcy declaration. Special deferral provisions apply for instances where a 2nd chance right has already been granted.
- An opposition against the debtor's discharge may be filed if the applicant alleges that the debtor's bankruptcy, is due to fraudulent acts of the debtor or that the debtor did not show good faith either in declaring the bankruptcy and during it, has not been cooperating with the insolvency authorities, has fraudulently concealed income or assets during the insolvency proceedings, or that criminal proceedings are pending.

- Debtor executives are discharged, either within 36 months from application filing or 24 months from insolvency declaration, from their ex-lege joint liabilities, when these have been generated during the suspect period. This may be extended to cover 12 months prior to the commencement of the suspect period.
- The discharge of the debtor or its representative, as the case may be, does not in any way affect the continuation of the process of liquidation and distribution of the assets of the bankruptcy estate and the rights of the creditors over them, including the undisclosed income or assets which have been fraudulently or negligently concealed in the context of insolvency proceedings by the debtor and the rights of the secured creditors over the debtor's secured assets, which is conducted and completed in accordance with the provisions of this Code.
- The debtor's discharge does not affect the claims against the other co-debtors or guarantors involved by law or by legal act.

5. Key contacts

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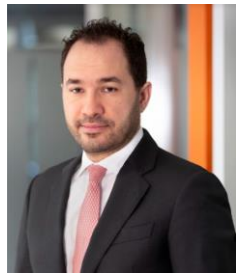

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