Update on the new framework on corporate insolvency

A Code for debt settlement and providing a second chance

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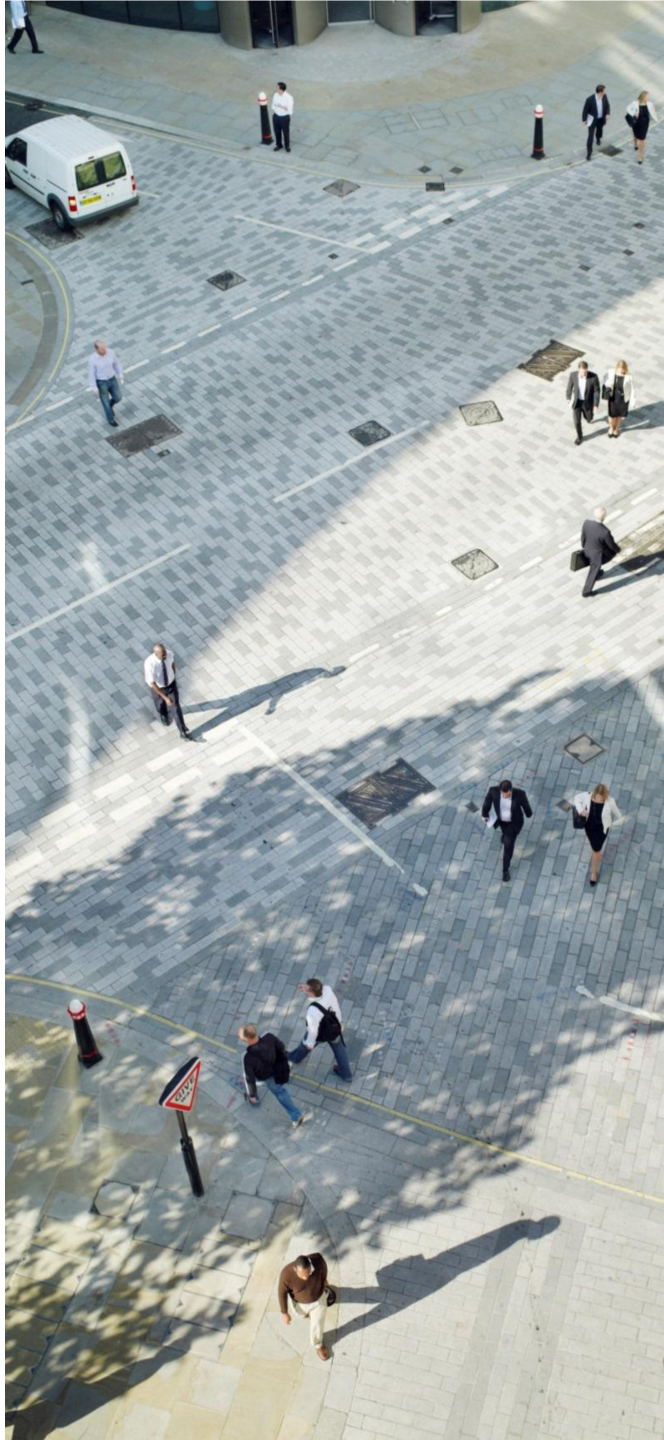

Outline of the Code for debt settlement and providing a second chance

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 Code and entry into force

The new insolvency framework is divided into components which address the following 3 key areas:

1. **Preventive** (pre-insolvency) restructurings (including a digitalised-automated Out of Court Work Out (OCW) process and a pre-pack business recovery process contingent to court ratification).

2. **Bankruptcy proceedings** (with distinct processes designed and tailored to address the debtor categories based on the size of the bankruptcy estate, not legal capacity/form).

3. **Dedicated provisions for vulnerable individual debtors** who may benefit from the social policies framework provided in the frame such as Lease and buy back mechanism and primary residence state subsidy

The new insolvency framework provisions were initially envisaged to enter into force on 1.1.2021 but their deferral was voted just before Christmas, following the enactment of Law 4764/2020 (Greek Government Gazette A' 256 23/12/2020). In particular, the provisions on pre-pack rehabilitation and bankruptcy processes (with the exclusion of small materiality bankruptcies) will enter into force as of 1.3.2021, whereas the provisions regulating the OCW, the small materiality bankruptcies and the vulnerable debtors framework will enter into force as of 1.6.2021.

The present newsletter addresses the corporate insolvency aspects of the new insolvency framework. We will follow up our update with the provisions addressing the debt restructuring and bankruptcy of small materiality cases as well as the new framework for vulnerable individuals and households.

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Key corporate framework processes

1. Key corporate framework processes

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.
	Business Recovery (Rehabilitation) Process	• New Code introduces only two classes of creditors, (i) those that enjoy a **special privilege**, and (ii) **all other creditors affected by the rehabilitation agreement.**
Bankruptcy proceedings	Liquidation as a business or parts of it as a going concern	• Incorporation of L. 4307 /2014 ex. special administration process, with certain procedural adjustments, simplifications and improvements. The new framework **enhances the creditors assembly role,** especially in the context of the tender process ratification, while limiting Court intervention.
	Piecemeal liquidation	• Simplification of bankruptcy process with **reduced Court involvement** and implementation through **e-auction** platform.

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Analysis of each process

3.1 Out of court workout

Out of Court workout key principles

Perimeter: Every legal entity that has bankruptcy capacity 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 will enter 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**.

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;
- ✔ Tax and cost incentives.

3.2 Rehabilitation Process

Rehabilitation key principles

- The process allows for **debt restructuring** with or without **transfer of business**.
- New Code introduces only two classes of creditors, (i) those that enjoy a **special privilege**, and (ii) **all other** affected by the rehabilitation agreement.
- The court will ratify the agreement if:
  - I. all consent requirements are met,
  - II. the agreement does not place a dissenting creditor in a worse position than would be if the debtor were bankrupt and treats creditors equally.

Key principles

- Present or **threatened inability** of debtor to fulfill its overdue financial obligations, in a general manner;
- Restructuring of liabilities through a **ratified by the Court** agreement;
- With or without **transfer of business**;
- **Consent criteria** – 50% of creditors with a special privilege and 50% of all other affected creditors (or 50% of creditors with a special privilege and 60% of total creditors under certain rules);
- **Deemed consent from State and public authorities** under certain rules;
- Rescheduling of liabilities born **up to the issue date of the Court decision**;
- **Binding process** for all creditors provided that they do not get in worse position compared to liquidation;
- **Interim financing** has a general privilege of first class. It is provided either in cash or in the form of goods and services, for securing business continuity;
- **Tax** and cost **incentives**.

Indicative timeline

Drafting of rehabilitation agreement

Submission of the application, the rehabilitation agreement and necessary documentation to the court

2-3 months — **Court hearing**

6-9 months — **Court decision**

30 days — **Lapse of 30 days time-limit for the filing of third-party oppositions against the ratifying decision**

Implementation of rehabilitation and transaction completion

Advantages

- ✔ **Binding** agreement for all creditors;
- ✔ Rescheduling of liabilities **born up to the issue date** of the Court decision;
- ✔ **Discretionary restructuring of** the **preferential claims** of Social Security Funds and the Greek State (including liabilities from fines, surcharges, etc);
- ✔ The Greek State **deemed consent perimeter** (i.e. capped at €15mil on principal debt per public creditor if the non-worse off principle is certified in the experts opinion and private debt is higher versus public debt) is expected to allow easier achievement of consents and positively affect transaction certainty.
- ✔ Automatic suspension of individual **enforcement measures** up to **6 months** before the petition and up **to 12 months** from the rehabilitation submission;
- ✔ **No succession of liabilities**;
- ✔ **Selected and specific liabilities** transferred;
- ✔ As a result of the process structure the **due diligence time** for the investors, **is reduced**.

3.3 Bankruptcy proceedings -

Ordinary bankruptcy process

3.3 Ordinary bankruptcy process

Cessation of payments
The new law has introduced a more clear definition of cessation of payments.

(1) liquidation of the debtor’s business or parts of it as a going concern

Liquidation on a going concern basis is effectively the incorporation of the special administration process into the Code, with certain procedural adjustments, simplifications and improvements, based on practical experience. An important element is the enhancement of the role of the Creditors Assembly.

(2) piecemeal liquidation

The piecemeal process, in effect, will benefit from the incorporation of the e-auction mechanism into the Code.

3.3.1 Liquidation of debtor’s business or parts of it as a going concern

Key principles

- Execution **speed**;
- Through the **submission of intervention** to the bankruptcy application;
- **Intervention supported by** – 30% of total creditors including at least 20% of secured creditors;
- Debtor must be at **cessation of payments**;
- The creditors can **designate** the Bankruptcy Administrator;
- Assets are auctioned through **e-auction platform** with **no reserve price**;
- Creditors’ Assembly can request a **better offer** from the bidder;
- **No Court ratification** of process results;
- **Process duration** 18 months (subject to extension);
- **Interim financing** is satisfied in priority, before the distribution of proceeds to the creditors;
- **Tax** and cost **incentives**;
- Assets are transferred **free of encumbrances**;
- Opportunity to **acquire** assets **free of legal issues**.

Milestones

Prerequisites:

- **Cessation** of payments

Bankruptcy application:

- Filled by debtors or creditors

Submission of intervention:

- **30%** of creditors, including **20%** of special privilege

Declaration of bankruptcy by the Court

- Appointment of bankruptcy administrator

Announcement & Verification of claims:

- Creditors announce their claims within 3 months from bankruptcy declaration,
- The claims are verified within the **next 3 months** from the announcement of claims.

Public Auction:

- **E-auction** within **20-40 working days** from the publication of the invitation with **no reserve price**
- The bankruptcy administrator drafts and publishes a report with the winning bidders
- **Ratification** of process results from the **Creditors’ assembly**, within **one month.**
- **Option** to request the bidder for a **better offer**, which needs to be submitted within **10 days**
- In case of **no offers: new public auction** or **piecemeal liquidation**

Transfer of business:

The bidders sign the transfer within **5 working days** from creditors’ assembly approval.

Distribution of proceeds

3.3.2 Piecemeal Liquidation

Key principles

- Execution **speed**;
- Bankruptcy **application filed** by either the debtor or the creditors;
- Debtor must be at **cessation of payments**;
- The creditors can **designate** the Bankruptcy Administrator;
- Assets are auctioned through **e-auction platform** with a reserve price;
- **Process duration** up to 5 years (subject to 2 years extension);
- **Interim financing** is satisfied in priority, before the distribution of proceeds to the creditors;
- **Tax** and cost **incentives**;
- Opportunity to acquire assets **free of legal issues**.

Milestones

Prerequisites:

- **Cessation** of payments

Bankruptcy application:

- Filled by debtors or creditors

Declaration of bankruptcy by the Court

- Appointment of bankruptcy administrator

Announcement & Verification of claims:

- Creditors announce their claims within 3 months from bankruptcy declaration,
- The claims are verified within the **next 3 months** from the announcement of claims.

Public Auction:

- **E-auction** within **30-45 days** from the publication of the invitation with a **reserve price**.
- Potential bidders may submit successive higher **binding offers** until the closing time of the process**,** the Notary Public drafts a report stipulating all offers submitted and the **winning bidders.**
- In case of **auction failure:** repeated auctions at reduced price.
- If asset not auctioned, it is **transferred to the State** if the debtor has due payments to the state.

Transfer of assets:

The bidder signs the transfer and pays the auction proceeds

Distribution of proceeds

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Tax and procedural incentives

4. Tax and procedural incentives

#	Incentives	Out of court workout	Rehabilitation procedure	Bankruptcy process
1	Any profit arising from **debt write off** or **debt / liabilities restructuring** is not considered as taxable income or donation.	✓	✓	
2	Any profit arising from the **transfer** of assets, as part of rehabilitation process or liquidation of debtor's business or parts of it as a going concern, is not considered as taxable income.		✓	✓
3	Any **contracts** or **acts** for assets' transfers, registrations and other similar acts are exempted from **stamp duty**, **indirect taxes** (excluding VAT and RET tax) and from certificates' filing.	✓	✓	✓
4	No need to issue **tax and social security certificates** in order to get any form of financing.		✓	✓
5	Fees and rights of notaries, lawyers, court bailiffs and registrars are **limited to 30%** of the legally amount.	✓	✓	✓
6	The **transfer** of assets is achieved **without succession** of liabilities.		✓	✓

Key takeaways

- ✔ Investor friendly tax incentives which facilitate the **structure** and shorten the **time to completion** of transactions;
- ✔ Simplified process of financing **facilitates** debtor's operation during the period up to completion of the restructuring and **secures** cash flows available for the working capital needs of the company.

5. Key contacts

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