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Greece: Rescue procedures in insolvency

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Greece

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 22 March, 2023

Native name:

ΠΟΛ.1027/2018 Τροποποίηση του Πτωχευτικού Κώδικα (ν. 3588/2007 - Α' 153) με τους ν. 4446/2016 (Α' 240), ν. 4472/2017 (Α' 74), ν. 4491/2017 (Α' 152) και ν. 4512/2018 (Α' 5): Επισήμανση βασικών μεταβολών στη διαδικασία της πτώχευσης και παροχή οδηγιών; Νόμος 3588/2007 Πτωχευτικός Κώδικας; Νόμος 4013/2011 Σύσταση ενιαίας Ανεξάρτητης Αρχής Δημοσίων Συμβάσεων και Κεντρικού Ηλεκτρονικού Μητρώου Δημοσίων Συμβάσεων - Αντικατάσταση του έκτου κεφαλαίου του ν. 3588/2007 (πτωχευτικός κώδικας) - Προπτωχευτική διαδικασία εξυγίανσης και άλλες διατάξεις

English name:

Circular 1027/2018: Amendment of the bankruptcy code (Law 3588/2007 - OJHR A-153) by Law 4446/2016 (OJHR A-240), Law 4472/2017 (OJHR A-74), Law 4491/2017 (OJHR A-152), and Law 4512/2018 (OJHR A-5): Indication of critical changes in bankruptcy proceedings and provision of instructions; Law 3588/2007 Bankruptcy cde; Law 4013/2011 Establishment of a single idependent public procurement authority and central electronic public procurement registry - Substitution of the sixth chapter of Law 3588/2007 (bankruptcy code) - Procuring process of consolidation and other provisions

Article

Article 7, 107 et seq. BC, 108 BC, 109 BC, 115, 118, 120, and 120a BC, 124 BD, 128 BC of Law 4446/2016; Articles 14 and 15 of Law 4491/2017; Articles 107-131 of Law 3588/2007; Article 12 of Law 4013/2011

Description

The [bankruptcy code](#) provides for two proceedings that are relevant to the restoration of a failed enterprise to financial health; the recovery procedure that precedes bankruptcy and the reorganisation plan, which is considered after the declaration of bankruptcy.

Pre-bankruptcy recovery procedure

A debtor either in cessation of payments or in a situation of imminent cessation of payments may file for the ratification of recovery agreement already reached with the qualified majority of creditors (60% of the total claims, 40% of which should be secured). In addition, any debtor that is not in cessation of payments or in a situation of imminent cessation of payments can be subject to the recovery procedure, provided that the court considers it probable that the debtor will become insolvent, and insolvency can be lifted through implementation of the recovery procedure.

The agreement may consist of a prepack sale of all or part of the business, a disposition of assets, a debt-equity swap, or a change of the term of existing obligations, such as a write-down of the debt, extension of the repayment date, alteration of the interest rate or replacement of the obligation to pay interest by the obligation to provide the creditor with a share of the profits; such changes to liabilities may also be accomplished through a refinancing of existing debt or through the issue of a bond loan that may also include a convertibility feature. From the submission of the recovery agreement to the Bankruptcy Court until its decision there is an automatic uphold for a four-month period on all individual and collective enforcement measures against the debtor. Such automatic moratorium is granted to the debtor only once. In case the court's decision is not published within the four-month period, the court may grant a suspension on all individual and collective enforcement measures against the debtor or any other preventive measure.

Before the submission of the recovery agreement, a moratorium may also be granted - at the request of the debtor or the creditors - if a creditors' declaration in writing of 20% of the total claims is submitted, provided that there is an imminent danger. Such uphold can be granted by the court only once and for a maximum period of four months. There are three main criteria for the ratification of an agreement reached by the debtor and the qualified majority of creditors as set out above. First, it must result in a viable business and lift the debtor out of cessation of payments (or prevent it from reaching this state). Second, it must not leave any non-consenting creditors in a less favourable position than they would be in bankruptcy liquidation. Third, each non-consenting creditor may not be treated less favourably than any other

creditor of the same rank or priority.

The Bankruptcy Court will not examine the debtor's viability if the following conditions are met:

- contracting creditors agree with the content of the business plan;
- the recovery agreement contains listing of contracting and non-contracting creditors,
- the claims of which are expected to be effected from the materialisation of the recovery agreement; and the recovery agreement along with the business plan were served to all non-contracting creditors;
- the claims of which are effected from the recovery agreement, as for instance, when the recovery agreement, as for instance, when the recovery agreement provides for their write-off or for an extension of the repayment date.

A pre-bankruptcy recovery agreement will be judicially ratified if:

- it is signed by creditors representing a majority of 60% of the total claims, 40% of which should be secured; it renders the debtor viable;
- non-signatory creditors receive at least as much as they would receive through bankruptcy liquidation;
- it does not violate any mandatory legislation, such as competition law, or is the result of fraud conducted by the debtor or any creditor or any third party;
- creditors of the same class are treated equally and any exceptions are justifiable by important business or social reasons;
- and it lifts the debtor out of cessation of payments.

The reorganisation plan

Any debtor may propose a reorganisation plan either along with its bankruptcy petition or within three months of being declared bankrupt. The three-month period may be extended by the reporting judge only once and up to one additional month if it is proved that the extension is not detrimental to creditors' interests and the plan will be accepted by the creditors. The proposed reorganisation plan must include:

- information relating to the current financial situation of the debtor;
- at least one proposed form of reorganisation; and information relating to payments to creditors. The latter is subject to one restriction: the proposed debt settlement must not prejudice creditors' classification.

The plan must mandatorily provide for secured creditors, general preferential creditors, unsecured creditors and subordinated creditors. Employee claims constitute a particular class. Claims of unsecured creditors that are of diminished value may be classified separately. Within a particular class, more than one group of creditors may be provided. The plan must provide equal treatment among creditors of the same class, or among creditors of the same group.

The plan shall be approved by a majority of creditors representing 60% of the debtor's debt, at least 40% of which represent secured debt. With respect to a recovery agreement, pursuant to the provisions of the GBC (Greek Bankruptcy Code), a guarantor's or co-debtor's liability is limited to the value of the claim against the debtor, as such claim was reduced in accordance with the ratified agreement and provided that the relevant creditor consented to the reduction. There is a similar provision with respect to a reorganisation plan.

Comments

The reorganisation plan process has hardly been tested in practice. The statute seems to permit the development of a debtor-in-possession insolvency proceeding, as the court, upon receiving a voluntary insolvency application and a plan that provides for the continuation of the debtor's business, may decide to allow the debtor to maintain control of the business along with the bankruptcy administrator's cooperation.

Upon filing for declaration of bankruptcy and until the grant of the relative order, a moratorium against all enforcement actions (including the involuntary grant of security over assets) may be provided by the competent court as a preliminary measure.

The declaration of bankruptcy puts into immediate effect a moratorium on all enforcement actions by unsecured creditors. Secured creditors cannot continue pursuing their claims against the secured assets that are closely connected to the debtor's business or production unit or enterprise until the reorganisation plan is approved. Any enforcement procedures attempted during the suspension are null and void.

The ratified reorganisation plan is binding towards all the parties involved (such cramdown includes the dissenting and non-participating creditors).

Cost covered by

Not applicable

Involved actors other than national government

Other




Involvement others

Bankruptcy court, creditors

Thresholds

No, applicable in all circumstances

Sources

-  [European e-Justice Portal, Insolvency registers - Greece](#)
-  [European Judicial Network in commercial and civil matters, Bankruptcy - Greece](#)
-  [Rescue and insolvency procedures - Greece](#)

-  [Law 3588/2007 - Official Gazette 153/A/10.7.2007](#)
-  [Law 4013/2011](#)
-  [Circular 1027/2018](#)
-  [Law 4446 / 2016](#)
-  [Restructuring & Insolvency](#)

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