

# **OUT OF COURT RESTRUCTURING PRINCIPLES AND ALLIANCE WITH LEGAL FRAMEWORK**

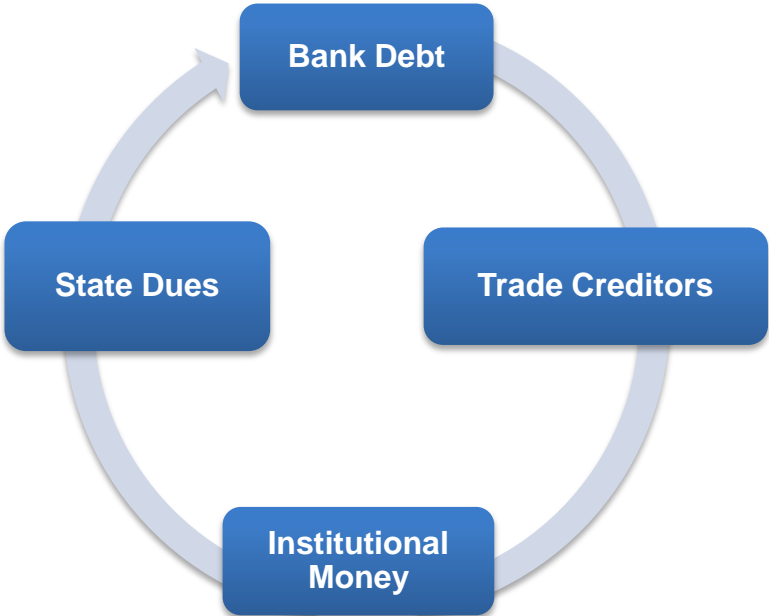
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**The purpose of this document is to provide an analysis of the major amendments required in Legal and Regulatory Framework Corporate Bankruptcy so as to facilitate swift and effective Corporate Restructurings.**

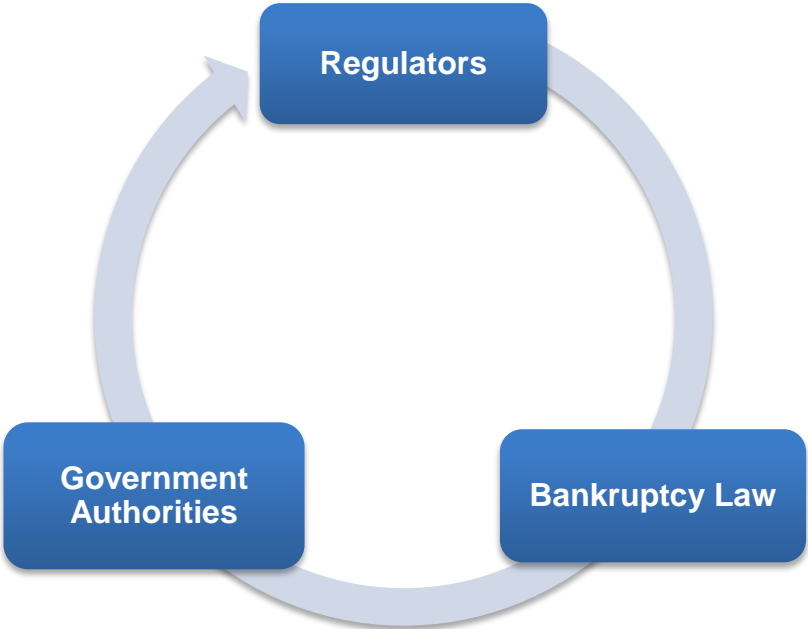
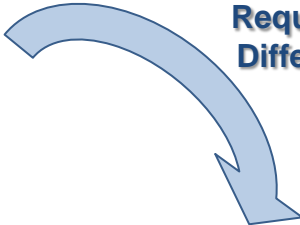
**This document is not a legal document and it mainly reflects personal views of the speaker deriving from his experience on Corporate Restructurings.**

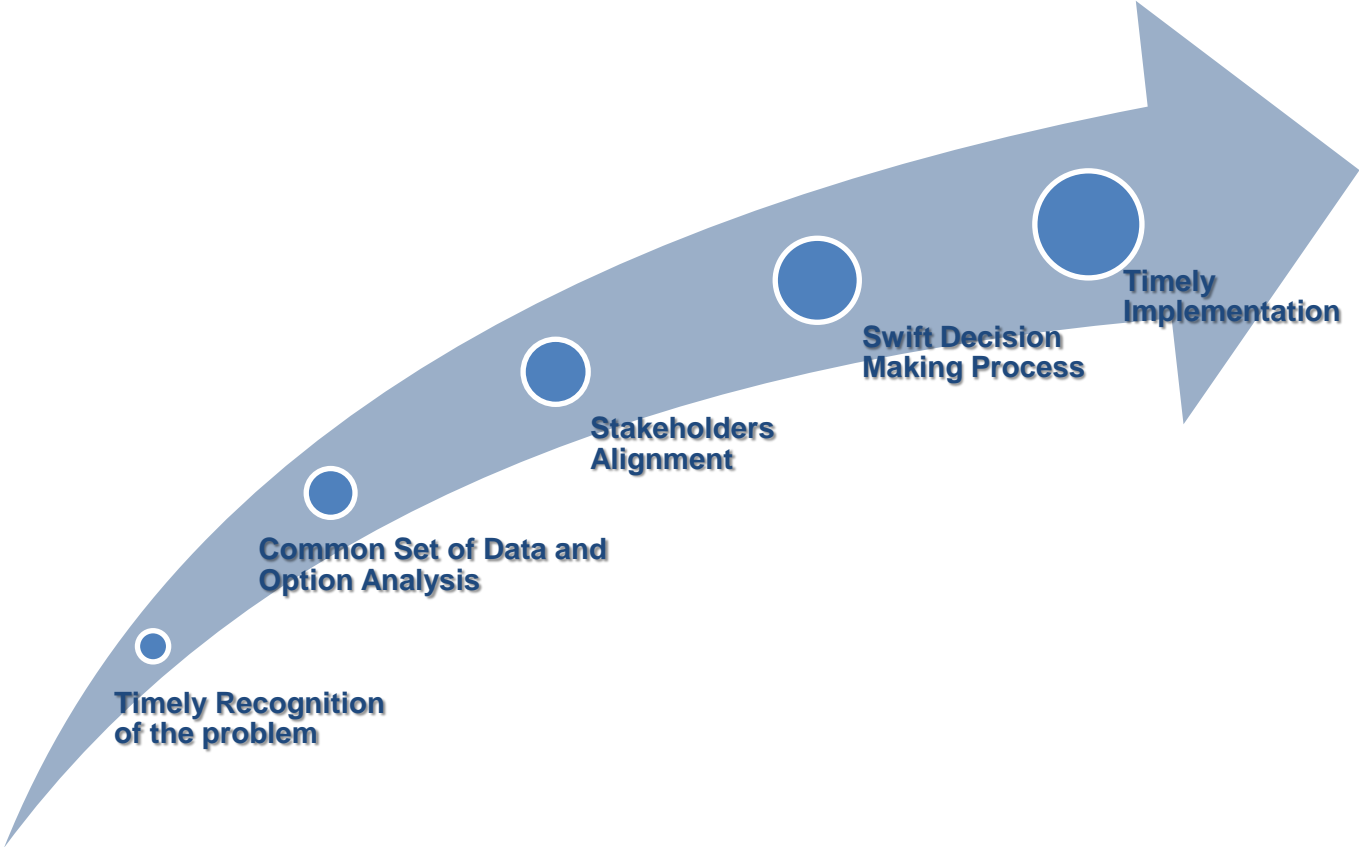
A Legal/ Regulatory Framework that facilitates Corporate Restructurings has to take into account the steps that a creditor should follow in order to reach a qualified decision on the matter. In such a process it is quite important any legal/ regulatory initiative to take into account the following principles:

- i. Restructuring is a **financial exercise** with a legal background and not the opposite and
- ii. For an agreement to be reached **multiple creditors have to apply common principles** in their decision making process
- iii. Decision making should be numerical based on an **analysis of options**
- iv. **Right decisions but delayed will lead to a failure**
- v. **A corporate restructuring is never perfect** given that it is an aggregate of concessions
- vi. A corporate restructuring in order to be successful has to provide to all stakeholders with at least their recovery at bankruptcy (“**no worse off principle**”)
- vii. **Different Policies need to drive stakeholders to a decision rather to a value maximization**
- viii. **Participants should deal each restructuring not individually but as a portfolio solution**



Require Interventions by Different Policy Makers





## Key Steps Required in order to reach common understanding of the problem :

Introduce an expert (i.e. Judicial Administrator) who will provide an assessment of the current situation

The appointed expert to provide an overview of a liquidation analysis with the recovery estimation of each creditor in such case

The expert to provide a viability analysis of the Company and a proposal of a restructuring plan if feasible based on the no worse of principle

Management to provide an independent view on the business plan

All Creditors to challenge and accept such reports

Creditors to be in a position to submit a financial proposal based on the agreed business plan

Majority creditors to be in a position to vote and impose solutions to other creditors subject to the “no worse off principle”

Creditors decision to be in a position to be imposed to shareholders

Apart from Banks that play a pivotal role on Corporate Restructurings and need to create Coordinating Bodies (i.e. the Greek NPL Forum Initiative) policy makers have to assist with a number of initiatives:

## Regulators

- Impose to Banks the creation of dedicated teams to deal with NPEs independent of Core Business Units and with completely separate and independent decision making process
- Provide for Policy Documents that allow the Banks to rely on third party opinions
- Impose NPV based decision making models that take into account time and cost of each route to recovery

Adopt  
ECB  
Guidelines  
on NPEs

## Government

- Introduce Lender Friendly Corporate Restructuring Laws which allow for change of control decisions
- Introduce Regulated Insolvency Practitioners' Professions
- Facilitate haircuts by providing tax incentives for restructurings

## Government Authorities

- Impose Public Services (revenue services and social security organizations) to create dedicated teams to deal with restructuring cases
- Introduce processes whereby decision making is linked with option analysis that takes into account on an NPV basis liquidation vs restructuring scenarios
- Allow the dedicated teams to rely on expert opinions

### Corporate Restructuring Principles should incentivize investors to use Bankruptcy Proceedings

Participants in Corporate Restructurings have to understand that provision of new money has to be protected and incentivized by collateral dilution subject to providing increased “going concern” recovery

Bankruptcy laws should provide to the investor the certainty that a thorough 6 month due diligence could provide to a going concern acquisition

Regulators should allow Corporate Restructurings with material balance sheet restructuring and change of control to be treated as de-recognized loans

Government authorities should be in a position to acquire non controlling equity instruments as part of the restructuring such as any creditor

Tax claims at a change of control restructuring should be definite and not subject to future audits

Competition and Capital Market issues should be treated differently than “going concern” M&A transactions (failing company concept)

New Money Provision during a negotiation period should always be treated as super senior subject to a minimum percentage agreement of creditors



Timely implementation will affect the viability of an agreement.

