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Law 4469/2017

Out-of-court debt settlement mechanism

Law 4469/2017 introduces for the first time in the Greek legal system an organized extrajudicial procedure for regulating the debts of Greek businesses towards both the private and public sector. The main features of the procedure are the following:

Who may apply?

- Any individual who may come under bankruptcy procedures and any legal entity that earns income deriving from a business activity may apply for the procedure if they are tax residents in Greece and provided that:
 - on 31 December 2016 they had a debt towards a financial institution from a loan or credit that was overdue by at least 90 days (or a debt that was settled after 1 July 2016) or had arrears to the Tax Administration or Social Security Agency (FKA) or other public entities, including local government organizations, or failed to pay checks issued by them due to insufficient balance or had payment orders or court orders due to overdue claims issued against them,
 - where the total amount of their debt exceeds EUR 20 000, and
 - in at least one financial period within the 3 years prior to the submission of their application, they had a positive net result before taxes, interest and amortization, for debtors maintaining single entry accounting books or b) positive earnings before interest, taxes and amortization or positive equity, for debtors maintaining double entry accounting books.

Who cannot apply?

- The procedure does not apply to the following:
 - credit institutions, financial institutions and investment services providers, as well as branches of such foreign institutions and providers operating in Greece,
 - undertakings for Collective Investment in Transferable Securities (UCITS), Alternative Investment Funds and their managers,
 - insurance companies,
 - individuals or legal entities who have applied to the court under Law 4307/2014 (with respect to the extraordinary settlement of commercial debts) or the Bankruptcy Code, or who are already benefiting from the above procedures, or have interrupted their business activity, or are under dissolution/liquidation procedures, or have been convicted by final judgment for one of the offenses provided for in the law (e.g. tax evasion, money laundering, embezzlement, extortion, forgery, etc.);
 - debts generated after 31 December 2016,
 - state aid recoveries due to violation of the relevant provisions of the Treaty on the Functioning of the European Union, pursuant to Article 3 para. 6 of KEDE (Code for Collection of Public Revenues),
 - creditors whose claims do not exceed certain amounts and/or percentages provided by the law (small creditors).

- If any single creditor claim exceeds 85% of total claims against the debtor, the application to benefit from the procedure is forwarded to this creditor for bilateral negotiation.

Submission of application

- Debtor's application is submitted electronically to the Special Private Debt Management Secretariat (EGDICH) by 31 December 2018 on the dedicated electronic platform in EGDICH's website.
- The Greek State, FKA or other public entity (including local government organizations), or financial institutions, may, as creditors, initiate the procedure with a written invitation to the debtor to enter the procedure. Non response by the debtor means he loses the right to initiate the procedure himself at a later stage, but may still have the ability to be re-invited by creditors again.

Appointment of coordinator and negotiation procedure

- EGDICH appoints a coordinator from a special registry kept for this purpose, to coordinate the negotiation procedure.
- In order for the procedure to advance, creditors of at least 50% of all claims against the debtor must participate (not taking into consideration claims by persons associated with the debtor).
- The approval of the debt restructuring proposal requires debtor's consent and a majority of 3/5 of participating creditors, which includes 2/5 of participating creditors with special privilege, i.e. mortgage, prenotation of mortgage, pledge or other privilege under Article 976 of the Code of Civil Procedure (claims of persons associated with the debtor are not taken into consideration for the calculation of the above percentages). If the restructuring proposal is approved, a debt restructuring agreement is signed between the debtor and consenting creditors, otherwise the procedure is deemed completed with no results.

Debt Restructuring Agreement

- The creditors and the debtor freely determine the content of the restructuring agreement subject to the following restrictions/exemptions:
 - a) a creditor must not be placed in a worse financial position than which he would find himself in the event of liquidation of the debtor's property.
 - b) creditors receive amounts and other consideration at least equal to the amount they would have received in the event of liquidation of the assets of the co-debtors and of third-party assets on which they have a legal right.
 - c) Amounts and other consideration that remain to be distributed, after distributing the amounts of the above two cases, are distributed proportionately to creditors according to that part of their claim that is still outstanding.
 - d) Subject to the case under (a) above, for the calculation of the amounts and other consideration to be distributed among the creditors, the following is deducted from the creditors' claims: aa) the total amount of default interest of private sector creditors, bb) 95% of public sector receivables from fines imposed by the tax administration and 85% of public sector and FKA receivables from surcharges or late interest payment. The above amounts are included in the distribution, only if the repayment capacity of the debtor allows it and are repaid, in full or in part, only if the other creditors' claims have been fully repaid. Otherwise, the above amounts are written off following the full settlement of all debts under the restructuring agreement.
- By exception, it is possible to agree that claims that a) are generated simultaneously with or after the conclusion of the agreement, b) derive from the debtor's funding or by the provision of goods or services to the debtor, and c) are intended to ensure the continuation of the debtor's business, are satisfied in priority in relation to all claims that existed prior to the conclusion of the agreement, whether privileged or not.

Appointment of an expert

- For debtors that are large businesses, the procedure provides for the mandatory appointment of an expert in order to prepare a sustainability assessment and a debt restructuring plan. For debtors that are small businesses, the above appointment is optional, and may only occur following a request of participating creditors who are beneficiaries of at least 1/3 of the total claims.

Court Ratification

- The debtor or participating creditor may submit an application for the ratification of the debt restructuring agreement to the Multi-Member Court of First Instance of the debtor's registered seat.
- From the filing of the above application to the issuance of a decision, all measures, pending or not, of individual and collective enforcement against the debtor for the satisfaction of claims regulated by the agreement, are automatically suspended. During the period of suspension, it is prohibited to take any interim measures against the debtor, except for a) prenotation of mortgage or provisional measures that have been agreed in the restructuring agreement or b) provisional measures which seek to prevent the distancing or removal or transportation of movables of the enterprise or equipment which has not been agreed and poses a risk of devaluing the enterprise. The above suspension also applies to administrative enforcement proceedings against the debtor.
- The ratification decision covers all of the debtor's claims governed by the restructuring agreement and binds the debtor and all the creditors, irrespective of their participation in the negotiation procedure or in the agreement. The ratification decision is not subject to appeal (an appeal may be filed against a negative decision however).

Suspension of execution

- Starting from the day the coordinator issues an invitation to the creditors for participation in the procedure and for a period of 70 days, all measures, pending or not, of individual and collective enforcement against the debtor for the settlement of claims for which the out-of-court settlement is being sought are automatically suspended, as well as the imposition of interim measures against the debtor, including the prenotation of mortgage, unless these measures seek to prevent the distancing or removal or transportation of movables of the enterprise or equipment, which has not been agreed and poses a risk of devaluing the enterprise. Compulsory execution acts initiated by creditors following their notification with a copy of the application for entry into the procedure, are void.
- The debtor may request from the First Instance Court of its registered seat an extension of the suspension for up to 4 additional months, if the absolute majority of creditors involved consent, while each creditor may apply to the aforementioned court for an early termination of the suspension when it is probable that suspension of enforcement would cause irreparable harm to the requesting creditor.
- The suspension of enforcement automatically entails a prohibition on disposing of or burdening immovable property and equipment of the debtor's business or other assets, except where the disposal is included in his ordinary business activity.

Failure to comply with the debt restructuring agreement

- If the debtor fails to pay any amount to any creditor as agreed in the restructuring agreement for more than 90 days, the creditor may ask the court to cancel the agreement towards all parties.
- The restructuring agreement is automatically annulled and the claims of the State or FKA revive in the following cases:
 - Non-payment or only partial payment of installments to the Tax Authorities or FKA as defined by the restructuring agreement, of an amount corresponding to three installments.
 - Failure of the debtor to submit the mandatory income tax returns, VAT and social security reports within three months from the expiry of the deadline, and
 - Failure of the debtor to repay or legally settle his debts, by suspension of payment or through installments, where such debts are payable to the State or to third parties and collected by the Tax Authorities or FKA, and which were verified after 31 December 2016, within 90 days from the effective date of the agreement or, in case of court ratification, from the date of its ratification, or in the case of debts ascertained after entry into force or ratification of the agreement, within 60 days from the expiry of the legal deadline for their payment.

Participation of the State and FKA

- The State and FKA can undertake, within the framework of this law, to restructure debts to them, including the possibility of writing off a part thereof.
- A term of a restructuring agreement is invalid, if it provides the following:
 - Repayment of debts to the State in more than 120 installments.
 - Partial repayment of debts to the State at intervals exceeding one month.

- A monthly installment of less than EUR 50.
 - A grace period for the repayment of debts to the State.
 - The settlement of claims with consideration other than money.
- Existing debt settlement arrangements to the State under Laws 4152/2013, 4174/2013, 4305/2014 and 4321/2015 fall within the debt restructuring plan, as finalized on the date of approval of the restructuring agreement.
- For debts to the State up to EUR 20 000 (which does not include any debts settled by the above mentioned laws) the following shall apply:
- For principal debts (i.e. initial debts as verified without interest or late payment surcharges) up to EUR 3 000, their repayment as well as the repayment of penalties / interest can take place in up to 36 monthly installments, with a minimum monthly installment of at least EUR 50, without the possibility to write off any amount.
 - For principal debts exceeding EUR 3 000, their repayment as well as the repayment of surcharges/interest can take place in up to 120 monthly installments of at least EUR 50 each, without the possibility to write off the principal debt.
 - In the above cases, the State does not participate in the negotiations, nor does it file a restructuring proposal and debts to the State are added to the positive votes of the participating creditors, if the final restructuring plan satisfies the conditions of this law.
- Similar rules as those mentioned above for the State are provided for debts to FKA.

Cooperation of financial institutions

- When more than one credit and financial institutions or management companies or companies acquiring receivables from loans and credits of Law 4354/2015 have or manage overdue receivables from the same debtor, they may cooperate to submit a common proposal to the debtor, in order to reach a sustainable solution if there is sufficient evidence for inability of the debtor to fulfill its financial obligations.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.