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Newsflash

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Debt Settlement and Second Chance Provision L. 4738/2020/(Official Government Gazette A' 207/27.10.2020)

Law 4738/2020/Official Government Gazette A' 207/27.10.2020) «Debt Settlement and Second Chance Provision» addresses for the first time holistically the insolvency issues of natural and legal persons, incorporating the provisions of the Directive (EU) 2019/1023.

The main changes introduced by the new law are summarized as follows:

Early warning mechanism

- An early warning electronic mechanism which classifies debtors in three (3) insolvency risk levels, low-medium-high and is supervised by the Special Secretariat for Private Debt Administration, is introduced for natural and legal persons. This tool will be able to identify circumstances that could make the debtor insolvent.
- Upon inclusion in the Early Warning Electronic Mechanism and if the debtors are classified in the medium or high-risk level, they may contact specific institutions for free specialized services (e.g. legal, advisory, etc.) which will help them deal with the insolvency risk. In particular, these services are provided: (a) by the Borrower Support Centers and the Borrower Support Offices of the debtor's permanent residence region for debtors, who are natural persons and do not earn income from a business activity or from self-employment and (b) by the relevant Chambers of Commerce, the respective Professional Associations or the Institutes of Institutional Social Partners when debtors are either natural persons and earn income from a business activity or by self-employment or are legal persons.

Out-of-court debt settlement mechanism

- A new out-of-court debt settlement mechanism is provided. This acts as the first opportunity to prevent economic weakness and over-indebtedness and concerns legal and natural persons falling under the insolvency capacity criteria, i.e. under the new

provisions, even natural persons who do not undertake a business activity or self-employment.

- The out-of-court debt settlement mechanism is a multilateral negotiation process between the debtor, the financial institutions, the State and the Social Security institutions, through an electronic platform which will be developed. The debtor may apply to be included in this mechanism for the settlement of his overdue debts to his creditors. By exception, the debtor may also apply for the settlement of his performing or his non overdue debts provided that he proves a deterioration of his financial situation by at least 20%, according to the criteria to be determined by a joint decision of the Ministers of Finance, Development and Investment and Labor and Social Securities.
If an agreement is reached, the restructuring agreement is concluded within two (2) months.
- Under certain conditions, subsidy may be granted to vulnerable debtors who have performing or settled debts for a period of five (5) years for the repayment of the loans which are secured with their primary residence.

Pre-insolvency business recovery process

- This concerns only persons that conduct a business activity.
- Creditors are now categorized into creditors with claims with special privileges and creditors with other claims (unsecured creditors and creditors with general privileges). In order to conclude an agreement, 50% consent of each category is required, with the possibility of bypassing these majorities under certain conditions. Creditors' consent can also be provided through electronic voting.
- The State shall agree to the resolution agreement by signing the agreement on the same terms and on the basis of private economic criteria on which a private creditor would also agree under the same circumstances, while a crucial factor is whether or not

the State's position in the resolution agreement scenario is deteriorating in relation to the insolvency scenario.

- The resolution agreement concluded only by creditors without the debtor's involvement can be ratified under certain conditions (e.g. in the event of non-publication of the financial statements for two financial years etc.).
- In the case of legal persons, the possibility of bypassing the consent of the partners/shareholders for the conclusion of the resolution agreement and in particular for the transfer of the company's assets or branch shall be granted, by way of derogation from any contrary statutory provision, subject to the provisions laid down in the new law.

Insolvency

- Insolvency capacity is now granted to every person regardless of whether they have a commercial status, as well as legal persons pursuing an economic purpose.
- A quantitative and qualitative presumption is introduced to diagnose the debtor's cessation of payments in order to facilitate the judicial judgement.
- The insolvency estate also includes the income of the debtor- natural person which exceeds reasonable living expenses.
- It is possible to accumulate creditors' request for the liquidation of the insolvency assets individually or as operating units.
- The declaration of insolvency entails the automatic and without cost termination of outstanding and continuous contracts, within sixty (60) days following the declaration of insolvency, unless the liquidator believes that this helps insolvency proceedings. The same applies to employment contracts, unless the liquidator within sixty (60) days, requests their "continuation", by drawing up new contracts with employees on the same terms as before the declaration of insolvency.
- The liquidation of a debtor's assets shall be disconnected from the verification of the credits, provided that creditors who have not announced their claim within the time limit and file an opposition are not entitled to participate in distributions already ordered.
- Only electronic auctions shall be held.
- The first bid price at the auctions shall be determined by the average price of the estimates of two certified valuers, and it shall be automatically adjusted to the auction procedures, provided that no eligible offers occur, and an auction could be conducted even without a first bid price. No opposition or other appeal or means against the determination of the first offer price is provided.
- Insolvency proceedings are accelerated, while insolvency is automatically terminated within five (5)

years of its declaration.

- The declaration of insolvency with a view to the sale of all the assets of the company or its integrated operative unit shall not constitute a reason for the withdrawal of administrative authorizations.

Debtor's discharge

- It provides for the debtor to be automatically discharged from his debts within three (3) years of the declaration of insolvency or under conditions (e.g. loss of primary residence, etc.) within one (1) year of the declaration of insolvency with the right of appeal of any person having a legitimate interest (e.g. in the event of criminal prosecution or conviction of a debtor for a felony act of fraud, embezzlement, etc., fraudulent bankruptcy, fraudulent concealment of income, etc.).
- Representatives of legal entities, if they have acted in good faith, shall be exempt from liability for debts incurred within the suspicious period or during the 12 months preceding it. The exemption shall take place after thirty six (36) months from the filing of the insolvency application, or twenty four (24) months after the declaration of insolvency or its registration in the Registry, whichever is the earlier, provided that within that period an appeal against the exemption has not been filed by any person with a legitimate interest.

Other Important Provisions

- In proceedings regarding insolvency liquidation, out-of-court debt settlement mechanism, resolution, transfer of primary residence to the Acquisition and Leaseback Body, the relevant contracts/acts are to be expressly exempt from tax administration certificates or other public service and from attestations or solemn declarations of third parties provided for in any provision of law.
- The benefit of legal and natural persons from a business activity, resulting from the write-off or settlement of part or all of their debts as a result of a restructuring agreement through the out-of-court debt settlement mechanism, resolution agreement or debt relief agreement shall be exempt from income tax.
- With regard to the primary residence, a private sector legal person acting as an Acquisition and Leaseback Body will be selected by the State through a concession agreement, i.e. it will undertake the obligation to acquire the primary residence of a vulnerable debtor, to rent and sell it back. There is also provision for the possible receipt of a housing benefit.
- An Electronic Insolvency Registry is established (through which announcements of creditors' claims during the insolvency shall be made, decisions and acts relating to insolvency shall be published, etc.).

- Small-scale insolvencies are foreseen, involving debtors who meet one of the criteria for identifying a very small entity. Applications for such insolvencies shall be submitted electronically (by exception) in the small claims Court (Ειρηνοδίκηείο). In case no intervention is filed against the application within thirty (30) days from its electronic submission or an intervention is exercised for the appointment of a trustee, the insolvency application shall be accepted by the court.
- The legal framework regarding Insolvency Practitioners, which may be either natural or legal persons, is being reformed.
- The law enters into force on 1.1.2021, when the Insolvency Code, as currently in force, Laws 3869/2010 (Katseli Law), 4307/2014 (Special Administration Procedure Act) and other special provisions, shall be repealed.

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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.

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