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Law on Extrajudicial settlement of debts - new step towards opening the path for efficient restructuring of businesses in Greece

The long discussed bill regarding extrajudicial debts' settlement has been enacted by the Greek legislator on May 3, 2017. Law 4469/2017 introduces a new process of extrajudicial settlement of debts that generate from the debtor's business activities. It also covers debts arising from activities outside business activities, to the extent that the restructuring of such debts is judged by all participants as necessary for the sustainability of the debtor's business. The latter case applies mainly to individual traders whose debts outside their trade directly adversely affect their business. Existing framework (articles 99 seq. of the Greek Bankruptcy Law and Law 4307/2014) was either destined for large companies with several creditors and substantial debts and was in some cases misused by de facto bankrupt companies or failed to be applied as not being binding for credit institutions (in case of L. 4307/2014). New law comes into place to set forth a broader scope and some defense lines against strategic defaulters.

I. Eligibility criteria

a. As regards debtors

The new law enables traders natural persons that are subject to bankruptcy, as well as legal entities that gain income by business activities and are Greek residents for tax purposes to submit an application for extrajudicial debts' settlement. Individuals without a trading activity, as well as professionals (e.g. lawyers, doctors etc.) are excluded from the ambit of the Law.

The prerequisites for filing a relevant application are the following:

1. The debtors should hold debts, which are overdue as of **December 31, 2016**. The debts that qualify are:
(i) debts against a financing institution, which are overdue for a period longer than 90 days; or
(ii) debts which have been restructured following July 1st 2016; or
(iii) debts that are due towards social security institutions or the State or other public entity; or
(iv) debts that arise from bounced checks or court judgments or payment orders.
2. The aggregate amount of debts to be settled should exceed the amount of 20.000 euros.
3. As regards debtors that keep a single-entry book system, they should have positive net earnings at least in one of the last three financial years before the submission of the application. Similarly, debtors that keep a double-entry book system, should have either positive net earnings or positive net equity at least in one of the last three financial years.

Credit institutions or financial institutions or branches of foreign credit or financial institutions that operate in Greece, providers of investment services as well as organizations of collective

investments in securities and insurance companies are all prohibited from submitting an application of extrajudicial settlement of debts. Moreover, individuals or companies cannot file an application under the new law if they have already filed an application for rehabilitation by virtue of other laws or the Bankruptcy Code, unless they have waived such prior applications. In addition debtors are barred from filing an application in case of cessation of their activities or conviction of a number of crimes, such as tax evasion, money-laundering, embezzlement, blackmail, forgery etc.

Guarantors or other co-obligors are obliged to submit an application jointly with the primary debtor. The above eligibility criteria under I (a) 3 do not apply for guarantors or co-obligors. In case the guarantors or other co-obligors do not submit an application, the procedures can only open if the relevant creditors consent. Opening of the procedure is not feasible even with the consent of the creditors in case the co-obligors are jointly and severally liable for the aggregate debts of a business (e.g. in case of general partnership).

b. As regards creditors

The following creditors do not participate in relevant procedure and they are not bound by the settlement agreement:

- Creditors with claims that do not exceed (a) on an individual basis a percentage of 1, 5 % of the aggregate claims against the debtors or the amount of 2.000.000 euros or (b) on an aggregate basis the amount of 20.000.000 or the percentage of 15 % of the aggregate claims against the debtor. In case of creditors with claims that do not exceed the above thresholds under (a) but on an aggregate basis exceed one of the thresholds under (b), they are excluded from the process only to the extent that they hold the claims with the smallest amounts until one of the thresholds under (b) is reached. Creditors with larger claims once such threshold is reached (through the aggregation of the claims of the latter creditors) participate in the settlement process. The purpose of such provisions is to protect creditors with small claims such as employees and the small companies-suppliers of the debtor.
- Creditors that do not consent to the opening of the procedure because the co-obligors do not co-file an application.
- Debts arising from unlawful state aid measures

II. The procedure

a) Application

Each debtor can submit an application until **31 December 2018** in a special electronic platform kept in the web site of the Secretariat for the Administration of Private Debt. Filing of a second application by the same debtor, while the first is pending, is not permitted. The debtor should submit several supporting documents together with his application, such as a list of all creditors as well as a proposal for the settlement of debts and a suggested payment schedule on a monthly or annual basis, as well as data regarding transfers of assets within the previous five years or any transaction outside usual trade activities and any payments of dividends. The value of the immovable property included in the application is substantiated with a valuation report of a certified valuer. The application process can be initiated by the Greek State, the Social Security Organizations, other public entities or financing institutions as creditors which can call the debtor to file an application within 2 months. In case of failure of the debtor to apply, the latter loses its right to submit an application, unless notified to do so by the above creditors. By virtue of the application the debtor grants its authorization to the involved parties to verify any information included in the application, such authorization being construed as a consent for the lift of the banking and tax secrecy.

b) Steps of the process

- **Appointment of a coordinator**

A coordinator is appointed from a special registry to be kept by the Secretariat of Administration of

Private Debt following two days of the application's filing.

- **Checking the completeness of the application by the coordinator**

The coordinator can ask the debtor to submit any missing data within 5 days from the notice by the coordinator. Failure of the debtor to comply would result to the cessation of the process and the exclusion of the debtor from a similar process in the future.

- **Invitation of creditors**

All creditors included in the list submitted together with the application are invited to participate in the process. They receive information regarding the aggregate amount of debts of each category of creditors. It is to be noted that all financing institution should declare to the Secretariat of Administration of Private Debt an e-mail address to which the coordinators will use to communicate with such financing institutions as creditors within 30 days from the publication of the new law. Creditors have 10 days to declare whether they will participate in the process or not.

- **Verification of quorum**

The necessary quorum is fulfilled by creditors which represent at least 50 % of the aggregate debts. If the quorum is not achieved, the process ceases and the debtor is excluded from a similar process in the future.

- **Negotiation**

The procedure and the deadlines vary depending on whether the debtor is a small or large enterprise and whether an expert is appointed. Each creditor is entitled to submit within a set deadline a counter –proposal for the settlement of the debts. The counter- proposals accepted by the debtor or the initial proposal submitted by the debtor, in case no counter-proposals were submitted are subject to voting. Necessary majority is 3/5 of the participating creditors from which 2/5 should obligatorily be security holders.

The new law states that in general creditors and debtor can freely decide on the content of the agreement of debts' settlement and restructuring, however by respecting the following limitations:

(i) The creditors should not receive through the settlement less than what he would have received in a scenario of compulsory liquidation of the assets of the debtor according to the provisions of the Code of Civil Procedure. Any amounts that the creditor would have received from co-obligors should also be taken into account. Therefore, the settlement agreement should provide that as regards such amount, i.e. (compulsory liquidation amount + any amounts to be received by the co-obligors) creditors should receive what the Code of Civil Procedure provides.

(ii) For any remaining amount the settlement agreement should provide that the creditors would be satisfied pro rata depending on the percentage of their claims which remain unsettled following the application of the above principle under (i).

(iii) The settlement agreement should exclude repayment of default interests towards financing institutions or repayment of a percentage up to 95 % of the tax fines and 85 % of the State or Social Security Organizations claims from fines or default interests, unless such amounts can be satisfied fully through the compulsory liquidation amount, or they can be full satisfied following the full satisfaction of all other creditors.

(iv) As regards debts towards the State and the Social Security Organizations certain limitations as regards the settlement terms are set forth.

(v) A super seniority privilege may be agreed by the majority of 3/5 of the creditors including 2/5 of the security holders for any financier or supplier whose credit or supplies aim to sustain the business of the debtor.

It is specifically provided that any settlement of debts which is beneficial for the debtor would apply also for any co-obligor who has co-filed the application, as well as for any guarantor whether he co- filed the application or no.t

- Ratification by the court

Such a ratification is optional and aims to render the settlement agreement binding also for the non –participating creditors. Short deadlines are provided for the hearing and the issuance of

judgement, 2 months and 3 months respectively. From the filing of the case until the issuance of judgment any compulsory individual or collection measures towards the debtor are ipso iure suspended. Same suspension applies for a period of 70 days commencing from the dispatch of the invitation to creditors by the coordinator.

III. Entry into force

The new law is expected to enter into force three months after its publication that is August 3, 2017.

Since the financial crisis in Greece there has been a seemingly long evolution of the legislative initiatives regarding the pre- insolvency procedures and the NPLs, recognizing the need that the value should be preserved allowing viable businesses to restructure. Law 4469/2017 seems to come at a time when the dust has to an extent started to settle and the stakeholders can digest lessons taken from the past as to what needs to be done to lift the barriers to efficient restructuring. However, as always the good intentions of the legislator need to be proved in the practice, especially given that the new law introduces new mechanisms that have not been tested, such as the electronic platform and the role of the coordinator.

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