

## NEW GREEK INSOLVENCY LAW

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**For the first time, Greece has a single, unified legal framework for modern and efficient preventive restructuring, pre-insolvency and insolvency resolution proceedings implementing internationally-tested best practice.**

The newly enacted Greek law titled “Debt Settlement and Facilitation of a Second Chance” (Law No. 4738/2020) (the “Law”) comes into effect on 1 January 2021. It introduces an integrated framework for dealing with early warning, personal and corporate insolvencies and discharges of debt under specific criteria to eliminate abuse of the Law by strategic defaulters, transposes the provisions of Directive 1023/2019 on preventive restructuring into the Law and replaces the majority of the various existing mechanisms for debt settlement and restructuring schemes currently in force.

**"The overall objective of the new Law is to increase the effectiveness of restructurings, insolvencies and discharges of proceedings "**

The overall objective of the new Law is to increase the effectiveness of restructurings, insolvencies and discharges of proceedings and shorten their relevant timelines through the simplification of procedural requirements and the implementation of a central electronic insolvency registry to serve as a means of communication for court and insolvency officials with all the parties involved as well as a single point of reference for the publication of the relevant court judgments. Auctions are to be held electronically using the e-auction platform to ensure transparency and publicity. This will speed up the insolvency process through the sale of insolvent estates or parts thereof at real market values as well as help preserve viable businesses through access to out-of-court settlements or preventive restructuring resolutions by way of strengthening the role of creditors and limiting

interference from the courts.

Simultaneously, work on the necessary secondary legislation and IT infrastructure envisaged by the Law is underway so that the new framework can achieve procedural simplification, whilst updating the existing infrastructure to ensure efficiency.

The new Law has been designed to provide modern out-of-court or in-court instruments to debtors and creditors to speedily resolve debtors' current, foreseeable, or even prospective, inability to perform their financial obligations prior or post debtors' general and permanent cessation of payments. The new Law now provides for an objective assumption of a debtor's "inability to pay", this being when a debtor does not pay their overdue liabilities to the Greek State or to social security, credit or financial institutions, amounting to at least 40% of said liabilities to any of the above creditors for a period of at least six months and exceeding an amount of €30,000.

The main pillars of the new Law can be summarised as follows:

## I. THE OUT-OF-COURT DEBT SETTLEMENT PROCESS

### (a preventive pre-insolvency procedure)

Under the new Out-of-Court Debt Settlement mechanism (which replaces the procedure of existing Greek Law No. 4469/2017), individuals or legal entities, eligible to be declared insolvent, may apply for extrajudicial settlement of their monetary liabilities to the Greek State or financial and social security institutions provided they do not fall under certain exemptions (e.g. 90% of a debtor's liabilities being owed to a single institution). The process may also be initiated by creditors with an invitation to debtors to apply within 45 days. Out-of-court settlement applications will be filed digitally to the Special Secretariat for the Administration of Private Debt through an electronic platform.

As for the filing of an out-of-court settlement application, so long as the process is not terminated, any enforcement actions and measures, pending or not, are automatically suspended. Creditor debt settlement proposals will largely be based on data provided by financial institutions and the Greek State, as well as debtors themselves.

Provided that a proposal secures the consent of the debtor, the majority (in terms of debt nominal value) of participating creditors which are financial institutions and at least the participating secured creditors, the debt settlement agreement is executed. Such a debt settlement agreement may not be reached without the consent of the debtor.

If the agreement concerns a loan secured with the debtor's primary residence, then a subsidy (up to an amount of €210) may be granted for instalments due for a period of five years under certain conditions.

Should a debt settlement agreement not be executed by the debtor and the participating creditors within two months of the application submission date, the application will be rejected. It is also noted that, should the proposal provide for a write-off of a debt owed to the Greek State or social security institutions and provided that specific procedural safeguards in the new Law are met, creditors will be deemed to have accepted the proposal.

The debt settlement agreement may be terminated by any participating creditor provided that the debtor has not made payments of an aggregate amount equal either to three payment instalments or 3% of the total amount due under the settlement agreement. Termination of the debt settlement agreement will result in the reinstatement of the debtor's liabilities to the terminating creditor to the pre-settlement debt amount less any amount already paid under the settlement to that date.

## II. THE PRE-INSOLVENCY BUSINESS RECOVERY PROCESS (REHABILITATION)

### (A preventive pre-insolvency procedure)

**"Should a debt settlement agreement not be executed by the debtor and the participating creditors within two months of the application submission date, the application will be rejected."**

The existing rehabilitation process, a pre-insolvency business recovery process, has been amended to include the provisions of Directive (EU) 1023/2019 to remove existing obstacles to the process and ensure that viable businesses in financial difficulties have access to an effective, preventive restructuring framework to enable them to continue operating. In this regard, in the event of a current, pending or even prospective insolvency, the process provides for the restructuring of the debtors' assets, liabilities and business which may now provide for the transfer of business under a mechanism to avoid resistance by shareholders. A restructuring agreement like this must be ratified by the court through a simplified short procedure.

The new Law provides that rehabilitation may be reached on the basis of a viable business plan of a term equal to that of the agreement under a rehabilitation agreement with the qualified majority support of its creditors. Such an agreement is to be approved by both the debtor and creditors to whom are owed at least 50% of

the debtors' total secured liabilities, as well as creditors representing at least 50% of the debtors' other liabilities.

A rehabilitation agreement may be reached by creditors meeting the above criteria even without the consent of the debtor under certain conditions, including when the latter is in a general and permanent cessation of payments or, for companies, there is a significant loss of equity or no financial statements have been submitted for registration to the Corporate Registry for two consecutive fiscal years.

Regarding debtor approval for companies, this shall be provided by its administrator or governing body, unless approval by its shareholders' or administrators' board is explicitly required by law.

### III. THE INSOLVENCY RESOLUTION PROCESS (INDIVIDUALS & LEGAL ENTITIES)

Under the new Law, both individuals and corporate entities can be declared insolvent. It provides for separate insolvency proceedings designed to address different debtor categories based on the size of the liabilities involved. Large scale insolvencies will be conducted under the traditional insolvency process, ending either in the sale of the insolvent business in whole or in part in case of an integrated operative unit ("going concern liquidation"), or the liquidation of the insolvent debtor's assets individual using the e-auction mechanism ("piecemeal liquidation"). Declarations of insolvency will be determined by the court and the ordinary insolvency process terminates five years after the relevant court judgement.

"Going concern liquidation" merges the existing special administration procedures under Law 4307/2014 with the new Law. The liquidation of a business is now conducted through an e-auction process without a reserve (minimum) price administered by a notary. The decisions of creditor assemblies are enforced by approving or not the liquidator's decision on the selection process of the assets being sold as well as the completion of the transaction in each case. If a liquidation has not been completed within 18 months of court judgement of the insolvency declaration, the liquidator shall proceed to the piece meal liquidation process.

In “piece meal liquidation”, an insolvent estate’s assets are sold separately through e-auction. The e-auction is conducted by a notary with an automated reserve price revision mechanism. Under this mechanism, a reserve (minimum) price is initially set by certified valuers which is gradually adjusted (first to the 3/4 of the reserve price and then down to 1/2) if no eligible offers occur and successive new e-auctions will take place, each no later than 20 days from the previous. After a third unsuccessful auction, the liquidator shall submit to the rapporteur judge without delay a request for a reduction of the price or for the approval of conditions to facilitate the sale. Otherwise, following a period of 120 days, the e-auction will begin again without a reserve price.

Small scale insolvencies are defined as those meeting one of the criteria of article 2 of Law No. 4308/2014 (i.e. those not exceeding €350,000 in total assets, or €700,000 in net amount of turnover, or an average of then employees) in terms of either an entity’s assets or a natural person’s property, will benefit from a simplified process generally to be completed within a period of twelve months.

The new Law also provides for the insolvency of natural persons. While insolvent individuals are not in principle disqualified from practice their professions, giving them a second chance to undertake new business provided they are eligible for the discharge of their debts.

Regarding interim protection, the general rule is that submitting an insolvency petition does not suspend enforcement by secured creditors. Two exceptions to this rule are provided: (i) in case of a business insolvency, the exception applies to cases where the petition anticipates a sale of the business as an operational unit, supported by creditors; and (ii) in case of natural persons’ insolvency, the exception applies when there is a protection for an eligible primary residence under the new sale and leaseback scheme.

Regarding secured creditors, the following changes are introduced: (i) they no longer need to waive their privilege in order to be satisfied by the bankruptcy estate; and (ii) they may decide whether to sell the secured assets or join insolvency proceedings, as the suspension of individual enforcement actions does not apply to them for a period of nine months as of the declaration of insolvency, except if the insolvency judgement provides for the sale of the assets of the company in whole or in parts if the secured assets are an integrated operative unit thereof, in which case the suspension applies to the secured creditors as of the issue of the insolvency judgement.

Regarding the termination of outstanding contracts, sixty days after a declaration of insolvency, all of a debtor’s outstanding and continuous contracts are automatically terminated without cost, unless the liquidator informs the debtor’s contractual counterparty of their intention to have them immediately terminated or to continue to be in force in the event that this helps insolvency proceedings or increases the value of the insolvent estate’s liquidated assets.

**"A rehabilitation agreement may be reached by creditors without the consent of the debtor under certain conditions of the new Law, including when the debtor is in a general and permanent cessation of payments or, for companies, there is a significant loss of equity or no financial statements have been submitted for registration to the Corporate Registry for two consecutive fiscal years."**

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When it comes to the liability of an insolvent company's directors, under certain circumstances (e.g. deliberately acting in bad faith in relation to the initiation of insolvency proceedings), they may be held jointly liable against the company's creditors; however, said directors shall be discharged from insolvent company's liabilities upon that entity's similar discharge of debts.

Regarding proof of debt, the process of verifying creditors' claims has been simplified. Liquidators must verify creditors' claims by means of reviewing their evidential documents against those belonging to the debtor. Of major importance, the liquidation of a debtor's assets has been disconnected from the verification of their creditors' claims: the liquidator shall on the one hand proceed with the liquidation of the debtor's assets without delays after finalising said assets' inventory, and on the other hand shall distribute the liquidation proceeds to creditors only following the verification of the debtor's liabilities.

Finally, when it comes to the discharge of debts, a debtor is automatically discharged from any debt after the lapse of three years as of their declaration of insolvency (or five years under special provisions applicable for the case of a second exemption). If there is a reason not to discharge the debtor, anyone who has a legal interest can appeal against said discharge. For debtors whose insolvency caused the loss of either their primary residence or of fixed assets whose value is equal to at least 20% of their total debt (and was not acquired in the twelve months prior to the insolvency application), then the discharge comes into effect on the first anniversary of their insolvency declaration. Such a discharge also provides for individuals who were held jointly liable regarding liabilities pertaining to a insolvency estate within a similar fixed term (for instance legal representatives of legal entities). The discharge of the debtor shall not terminate insolvency proceedings regarding further liquidation and distribution of the insolvency estate, including any other debtor's assets deliberately concealed.

## **IV. PROTECTION OF VULNERABLE DISTRESSED DEBTORS HOLDING A PRIMARY RESIDENCE**

**"The new Law introduces an early warning electronic mechanism, supervised by the Special Secretariat for Private Debt Administration of Ministry of Finance, in which debtors who apply are classified in three risk levels (low, medium and high)."**

A special regime for protecting primary residences of eligible individuals considered to be vulnerable distressed debtors i.e. (having an income up to €21,000, immovable property of a value up to €180,000 or movable assets up to €21,000 dependent on the size of their household) has been introduced, which provides for a sale and lease back scheme for primary residences and the establishment of a new organisation to implement said process. According to this scheme, in the event that a vulnerable debtor is declared insolvent or that enforcement proceedings regarding their primary residence are initiated, they may submit a request under the new regime, which then acquires ownership right over the debtor's immovable property at market value price as determined by a certified valuator. In return, the new organisation shall lease the same property to the debtor for twelve years for a set amount of monthly rent (to be determined primarily based on the applicable housing loans' average interest rate). The debtor may be entitled to re-purchase the property at a price objectively determined under the provisions of the new Law upon fulfilment of their rental payment obligations. This new regime will be run by a private sector entity which will oversee the process with specific duties and requirements set in out in a concession contract agreed with the Greek State following selection via a public bidding process.

## V. EARLY WARNING MECHANISM AND BORROWERS' SERVICE CENTRES

The new Law introduces an early warning electronic mechanism, supervised by the Special Secretariat for Private Debt Administration of Ministry of Finance, in which debtors who apply are classified in three risk levels (low, medium and high). If a debtor has been classified as of medium or high risk and is a natural person, then depending on their profession or business activity, they can contact either the competent Borrower Service Centres (if they don't earn income from said business or freelance activity) or the relevant Professional Chambers and Associations (if they earn income from said business or freelance activity), so that the debtor may receive free, specialised advice relating to the status of their debts and the possible options for settling them under the new Law.

All in all, the new legal framework improves pre-insolvency and insolvency processes making them simpler and faster, enhancing the transparency of all actions and easing communications between creditors, debtors, liquidators, rapporteurs and the competent court authorities in general. The new Law integrates all possible instruments for debtors and creditors to pursue effective preventive restructuring and insolvency procedures, which will hopefully result in the quick restoration of productive assets to functional use, a reasonable rate of recovery of claims for creditors and a second chance to over-indebted persons in Greece.

## KEY CONTACTS



**NIKOLAOS KOSTIKAS**

PARTNER • ATHENS

T: +30 210 455 7338

[nkostikas@wfw.com](mailto:nkostikas@wfw.com)

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