

Amendments to the Greek Bankruptcy Code and to the Out-of-Court Workout Mechanism (OCW)

Newly issued Greek Law 4549/2018 "Provisions for the Completion of the Agreement on Financial Targets and Structural Reforms - Medium Term Framework of the 2019-2022 Financial Strategy and other provisions" (hereinafter "the new Law") introduced, among other things, amendments towards the discharge of the non-fraudulent bankrupt natural person while the scope of the Out-of-Court Workout Mechanism (OCW) was broadened.

Amendment to the Greek Bankruptcy Code

According to the recently inserted par. 5 of art. 167 of the Greek Bankruptcy Code, a second chance is given to the honest debtors who are being discharged from their debts.

Fostering the discharge of the bankrupt debtor

Purpose

The amendments are geared to a "fresh start" and "second chance"¹ for non-fraudulent entrepreneurs that despite having failed with regards to the management of their business, are now encouraged to relaunch business activities.

The provisions of Law 4446/2017 that introduced the mechanism of discharge ("απαλλαγή") and abolished the mechanism of restoration ("αποκατάσταση") as well as the amendments by virtue of the new Law are governed by the same aspirations.

Conditions

Debtor: Any person with personal business activity and partners of General Partnerships that have been declared bankrupt as a result of the bankruptcy of the Partnership or of their own business activity can benefit from the provision of the discharge, whereas legal persons are in principle excluded from the scope of the provision. Likewise, shareholders of Sociétés Anonymes, partners of Limited Partnerships lacking commercial status, and those of Private Companies, can be declared bankrupt with respect to their personal activity. Debtors whose placement in bankruptcy was not possible due to the lack of funds to cover the proceeding costs are finally eligible for discharge.

¹According to the European Commission Regulation (EU) No 240/2014 of 7.1.2014, IV "...the negative effects of bankruptcy on entrepreneurs should be limited in order to give them a second chance", Commission Notice COM (2007) 584, namely chapters n. 2.2. "bankruptcy is also an opportunity" and 3. "towards a second chance policy".

Debts: All outstanding amounts of the bankrupt persons fall within the scope of the provision with the exception of debts arising from offences having been committed with malice or gross negligence; the discharge is full but is not extended to obligations that are not related to the bankruptcy.

Requirements: The pivotal requirement is the declaration of the bankrupt debtor as excusable through the analysis of the elements of good faith and lack of malice by the Court. However, the creditors retain their right to express their views before the court as regards to the attributable or not element of the “excusable”. In addition, it is required for the bankrupt person to not have been convicted for the crimes of fraudulent bankruptcy, fraud, theft, forgery and embezzlement. This is a much laxer standard than the one prevailing in in Greek jurisprudence until now; insolvency is an inherent risk in every business activity, and therefore a second chance should be denied only to debtors whose conduct is excessively imprudent.

Petition of the debtor: The debtor has to file a petition for discharge before the Court whereas the judgment of the Court is issued within 60 days from the hearing.

Filing opening: The application for discharge may be filed after the lapse of two years from the declaration of bankruptcy. Under the new Law, persons with inability to be declared bankrupt (due to inadequate funds to cover the costs of the proceeding) may file an application for discharge three years after the registration of their name or trade name to the Business Registry (the “GEMI”) and the Bankruptcy Registries. The three-year period before the filing opening day was stipulated taking into account the fact that after the completion of three years the relevant registration has to be deleted from the Business Registry.

The provisions of the new Law in favour of the release of the bankrupt debtor from the remaining debts aim at boosting its commercial activity through the disengagement of bankruptcy from the obsolete general conception of fraudulent bankruptcy.

Amendment to the OCW²

Law 4469/2017 introduced the electronic platform for the submission and processing of OCW applications. The platform became operational in August 2017. However, certain provisions were considered to be essential to cover the operational inadequacies, namely as regards the simplification of the application submission and the expansion of the scope of the OCW.

Scope of the OCW

- The temporal scope of application of the OCW is extended to debts created or certified up to 31.12.2017.
- The use of the electronic platform is extended to certain categories of -until now- ineligible debtors regarding bilateral settlement of their debt towards the State/social security funds and the amount of debts now amounts to Euro125.000.

² European Commission Notice 23.06.2018, Compliance Report ESM Stability Support Programme for Greece, chapt. 4

- The general partners of General Partnerships and Limited Partnerships are able to settle their eligible personal debts, in case their personal activity is terminated but the Partnership remains active, whereas in case of dissolution of the Partnership but maintenance of their personal business activity, the general partners are able to apply for the OCW, including the debts arising from the partnership.

Ipsa jure suspension of enforcement measures

The time frame for the ipso jure suspension of enforcement measures is now 90 days (from 70 days stipulated by the provision of Law 4469/2017).

Reduction of the supporting documentation

The reduction of the required supporting documentation and the abolition of the requirement to submit supporting documents already available at the platform of the Independent Authority of Public Revenue (AADE), aim at the simplification and improvement of the operation of the platform.

The OCW online platform is now extended in favor of debtors that do not fall within the scope of Law 4469/2017. The simplified procedure gives the incentive to entrepreneurs to fall under the scope of the workout procedure to settle their debts. Overall, the legislative amendments render the OCW a more useful and effective tool for those who run viable businesses with debts towards the State or the private sector and wish to settle their debts while benefiting from the deletion of parts thereof.

For further information, please contact:

Dr. Emmanuel Mastromanolis

Partner

T (+30) 210 69 67 104

E e.mastromanolis@zeya.com

Giorgos Vavatsioulas

Associate

T (+30) 210 6967 142

E g.vavatsioulas@zeya.com

Konstantina Pyrgaki

Associate

T (+30) 210 69 67 029

E k.pyrgaki@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640

www.zeya.com

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