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Bankruptcy, Insolvency & Rehabilitation Proceedings in Greece

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KEY FACTS OF BANKRUPTCY, INSOLVENCY & REHABILITATION PROCEEDINGS UNDER GREEK LAW

Introduction

In the Greek law there are several types of proceedings addressing the inability of a merchant debtor (either a natural person or a legal entity) to pay its debts. On one hand, there is Bankruptcy, which is focused mainly on the payment of its debts to its creditors, mainly by liquidation of the debtor's assets. On the other hand, there are the so-called pre-bankruptcy proceedings whose main purpose is to maintain the debtor's undertaking by a restructuring of its debts. The pre-bankruptcy proceedings are the Rehabilitation Proceedings and the Out of Court Workout.

Before and during the aforementioned bankruptcy and pre-bankruptcy proceedings, protection of the debtor's assets may be provided for the purposes of each procedure. As a result, there are restrictions for the debtor regarding the freedom of administration or transfer of its assets and for the creditors regarding the enforcement of their claims on the debtor's assets.

It must be noted that the law 4738/2020 "Restructuring of debts and provision of a second chance and other provisions" has been issued, which abolishes the Bankruptcy Code and the other relevant legislation.

I. The Pre-Bankruptcy Proceedings

A. Rehabilitation

1. The Procedure

The rehabilitation proceedings of art. 31-64 of the L. 4738/2020 have a different purpose than bankruptcy, which is to reach a settlement/rehabilitation agreement between the debtor and its creditors, so that the undertaking of the debtor will become viable again. Thus, the target of rehabilitation is not the liquidation of the assets, as it is in bankruptcy (the settlement

agreement does not necessarily include liquidation).

The goal of the rehabilitation proceedings is to achieve a rehabilitation agreement between the debtor and a minimum required number of its creditors and to submit it to the competent court, along with a business plan. Subsequently, the rehabilitation agreement is validated by the court. So, there is no formal procedure opening of the negotiations with the creditors, only a "pre-packed" agreement between the creditors and the debtor that is submitted to the court for validation. Also, if the debtor is in a "cessation of payments" (in the meaning of the bankruptcy law), the creditors may also agree a rehabilitation agreement even without the debtor's participation.

2. The Protection Granted to the Debtor's Assets in Rehabilitation proceedings

A protection may be granted to the debtor's assets during three different stages: **a)** before concluding the rehabilitation agreement, i.e., during the negotiation between the debtor and its creditors; **b)** at the time that the rehabilitation agreement has been concluded and submitted to the court, but it is not validated yet and **c)** after the validation of the rehabilitation agreement from the court. More specifically:

2.1 The protection before concluding the rehabilitation agreement

2.1.1 The Procedure

Before concluding the rehabilitation agreement and during the negotiation between the debtor and its creditors, no protection is granted to the debtor automatically by the law. However, the debtor or a creditor may apply, only once, to the competent court for protection of the debtor's assets by ordering Provisional Measures, as an



injunction. Prerequisites for such an application are the written declaration of the creditors who represent at least 20% of the total debts that they participate to the negotiations, that an urgency/imminent danger exists, and that the application has been uploaded to the Electronic Registry of Solvency. The provisional measures cover the period of the negotiations between the debtor and its creditors in order to achieve a rehabilitation agreement and their purpose is, on one hand, to maintain the undertaking in the view of its rehabilitation and, on the other hand, to achieve “serenity” during the negotiations.

In addition, until the hearing and the issuance of the injunction, the above applicant may apply to the court for a Provisional Order (the provisional order is a “fast track” procedure which takes place usually within several days and there is not a formal hearing. The Judge examines the application, and it is at his/her discretion to order provisional measures, until the hearing or until the issuance of the injunctions decision). When the hearing of the injunctions takes place, the court may keep the provisional order valid, or it can modify it, or it may revoke it as well.

The provisional measures are valid until submitting to the court the rehabilitation agreement and cannot exceed 4 months from the decision or the provisional order. After that time limit, the provisional measures are void (under some conditions the above period may be extended, only for the suspension of any enforcement of creditor’s claims against the debtor, however the total period must not exceed 6 months).

The competent court may revoke or modify the provisional measures at any time either ex officio or following a relevant application by anyone who has a legitimate interest.

2.1.2 The Provisional Measures-the Type of the Protection

The court is not bound by any measures that are mentioned in the application. It has a wide range of options, such as ordering some of the measures asked or even ordering completely different measures at its discretion.

The provisional measures may, indicatively, include the suspension of any enforcement of creditor’s claims against the debtor (e.g. by seizure of assets), the prohibition of submitting any civil action against the debtor, the ban of proceeding with injunction against the debtor, the ban of transferring of the real estate property and the business equipment on behalf of the debtor, appointing a sequestrator, banning any termination of contracts, ordering the prolongation of contracts that are to be expired, maintenance of the current jobs in the company etc.

Moreover, for serious reason the court can also decide to apply the protection to the guarantors of the debtor or other co-debtors as well.

The court may also appoint a Special Receiver with the power to undertake the management of the debtor partially or totally (even without the consent of the debtor).

The aforementioned protection may bind all or several of the creditors (depending on the court's decision), including also the State (for taxes etc.). It must be noted that any action on behalf of any person who is bound by the provisional measures (e.g., a creditor), that is in breach of the provisional measures granted, is void.

Furthermore, the provisional measures do not apply regarding some specific types of claims such as the termination of a lease agreement, if the debtor owes at least six-month rents, the financial security agreements of the L. 3301/2004 or when an “important social reason”

occur (e.g., to pay to a creditor an amount which is essential for his and his family survival). The claims of the employees for their wages are not, in principle, affected by the measures, unless the court decides that there is an important reason.

2.2 The protection at the time that the rehabilitation agreement has been concluded and submitted to the Court

2.2.1 The Procedure

At the time that the rehabilitation agreement has been submitted to the court for validation, there are two types of provisional protection. First of all, there is a provisional protection granted to the debtor automatically (i.e., the protection is granted directly by the law and no court decision is required) and it is limited to the measures that are listed on article 50 of the law 4738/2020 (see below par. 2.2.2). Secondly, an additional, parallel protection (i.e. additional to the measures that apply automatically) may be granted as an injunction with a court decision (and a provisional order), exactly as the above mentioned protection granted before the conclusion of the rehabilitation agreement (see above paras 2.1.1-2.1.2)

The purpose of the provisional protection at this stage is on the one hand to keep the business of the debtor running and on the other hand to maintain its property.

2.2.2 The Type of the Protection

The automatic provisional protection granted at this stage, according to article 50 of the law 4738/2020, includes the suspension of any enforcement of creditor's claims against the debtor (e.g., by seizure of assets), the ban of proceeding with injunction against the debtor and the ban (in principle) of transferring of the real estate property and the business equipment on behalf of the debtor. Furthermore, any set-

off regarding claims born before submission to the court is restricted.

It is noted that the time limits regarding creditors' claims and rights against the debtor and the guarantors/co-debtors are sustained.

The above, automatic protection does not affect, inter alia, the rights of the creditors to file lawsuits against the debtor, the right of the debtor to file an application for bankruptcy, the payments on behalf of the debtor to third parties in order to keep its business running and any enforcement of claims for debts that were born after submitting the rehabilitation agreement to the court.

The aforementioned protection is granted only once and for a 4-month period. After the expiration of the 4-month period it is at the court's discretion to provide further protection according to the procedure and the type of protection above mentioned in paras 2.1.1-2.1.2, or to revoke, modify or prolong the aforementioned protection.

The automatic protection does not apply to co-debtors and the debtor's guarantors. provisional protection may apply to them only by a court decision in the procedures mentioned above (paras 2.1.1-2.1.2) (but it is argued that the letters of guarantee are not affected).

For any additional protection to the debtor that may be ordered by a court, see above, par. 2.1.2.

2.3 The protection after the validation of the rehabilitation agreement from the Court

After the validation of the rehabilitation agreement by the court, the agreement binds both the debtor and, in principle, all of its creditors, whose claims are regulated by the agreement, even those who were not part of the agreement or voted for the agreement. However, the creditors whose claims were born



after the validation of the agreement are not bound.

The content of the rehabilitation agreement can be open to the parties, which may include, inter alia, reduction of the debtor's liabilities against its creditors and/or modification of the liabilities of the debtor (such as the time of payment or substitution with an agreement to take part to the debtor's profits) and/or capitalization of liabilities with the issuance of e.g. shares and/or transfer of the debtor's undertaking, and/or transfer of the management of the debtor's undertaking to a third party and/or further funding for the rehabilitation etc.

It must be noted that the claim of a creditor against the co-debtors and the guarantors are in principle limited to the amount that the liability of the debtor has been reduced, according to the validated rehabilitation agreement, unless the creditor does not consent on that (in the latter case, the liabilities of the co-debtors and the guarantors remain intact against the creditor).

B. The Out of Court Workout

1. The Procedure

The Out of Court Workout is a new procedure, established by the L. 4738/2020 (art. 6 et seq). The law excludes some debtors from the eligibility for these proceedings (e.g., financial institutions, insurance companies, debtors whose debts to financial institutions or the State do not exceed €10,000 etc.).

The Out of Court Workout is a procedure done electronically via a special, public electronic platform. The procedure commences when the debtor or some types of creditors (financial institutions, the State, social security funds) file an on-line application via the above platform to the competent Authority appointed by the law, the Special Secretariat for the Administration of Private Debt. With the application the debtor

submits several data and documents including a list of its creditors, its assets etc. Subsequently, the creditors who participate may submit a proposal for the restructuring of the debts.

If a restructuring agreement is not concluded within 2 months from the application, or from the time that the creditors declare that they do not wish to submit a restructuring proposal, the procedure is considered fruitless.

2. The Protection

First of all, the filling of the application does not constitute a serious reason for the termination of contracts in force.

Furthermore, from the filling of the application and until the end of the Out of Court Workout, any measure of enforcement of claims on the debtor's movable and immovable assets and claims is sustained automatically by the law. Any relevant action that commences during the above period is void. Any auction scheduled to take place within 3 months from the application and any preparatory action of auction (including the confiscation) by a secured creditor, are not affected.

After the conclusion of the restructuring agreement, the creditors which are bound by it may not proceed with any enforcement proceedings against the debtor and all the pending or not measures of enforcement (either individually or collectively) are sustained during the period of the agreement and under the condition of its performance

II. Bankruptcy

The Bankruptcy is focused on the payment of the debtor's debts to the creditors by the debtor's assets, either by liquidation of them by a public auction or by selling the debtor's undertaking as a whole or partially.

When a debtor is in a constant and general inability of payment of its debts, the debtor or a



creditor or, in some instances, the district attorney may apply before the competent court, so that the latter will order the bankruptcy of the debtor. A foreseeable inability of payments can also be sufficient, only when the debtor applies for bankruptcy.

The court examines the case, and it may order for the bankruptcy of the debtor. However, the court may dismiss the application (e.g., when it is submitted in bad faith, e.g., when a creditor submits it for reasons irrelevant with the bankruptcy or when the debtor wants to avoid paying its debts).

If the court accepts the application, it appoints a) a Supervising Judge b) a Bankruptcy Trustee and it orders the debtor's property sealing.

1. Protection after the application for bankruptcy and until the court decision that orders the bankruptcy

After the application for bankruptcy has been submitted, whoever has a legitimate interest may submit before the competent court an application for Provisional Measures. The president of the court may order as an injunction whatever provisional measure he/she estimates as adequate for the maintenance of the assets of the debtor. The purpose of these measures is not to avoid the bankruptcy (as in the pre-bankruptcy proceedings) but it is to avoid any reduction of the assets or of their value, so that the claims of the creditors may be satisfied by the bankruptcy proceedings, when and if the bankruptcy will be decided by the court.

Any ordered provisional measure stops automatically, when the decision of the court that orders the bankruptcy (or dismisses the application) is issued and registered in the Electronic Registry of Solvency.

The Provisional Measures may indicatively include the suspension of any enforcement of

creditor's claims against the debtor (e.g. by seizure of assets), the prohibition of submitting any civil action against the debtor, the ban of proceeding with injunction against the debtor, the ban of transferring of the real estate property and the business equipment on behalf of the debtor, appointing a sequestrator, banning any termination of contracts, ordering the prolongation of contracts that are to be expired, maintenance of the current jobs in the company etc.

In principle, the aforementioned suspension of any enforcement of creditor's claims against the debtor does not affect in principle the secured creditors from satisfying their claim from the liquidation of the security (e.g., mortgaged or pledged assets), unless there is an admissible proposal for selling the debtor's undertaking (or its sectors) as a whole.

Furthermore, the provisional measures do not apply regarding some specific types of claims such as the termination of a lease agreement, if the debtor owes at least six-month rents, the financial security agreements of the L. 3301/2004 or the rights of the assignee in case of an assignment of a claim.

2. Protection after the court declares the bankruptcy

The "protection" mentioned in the present paragraph constitutes consequences of the declaration of bankruptcy for the debtor and the creditors. Some of the consequences are the following:

-After the decision of the court that declares the bankruptcy, the debtor may not in principle administrate or transfer its property/assets-Bankruptcy Estate- (this does not include any property/assets acquired by the debtor, after the bankruptcy is declared, unless it is interest and other periodic benefits, as well as ancillary claims or rights, even if they are born or



developed after the declaration of bankruptcy, if they come from a contract or right existing before the bankruptcy was declared). The administration passes to the Bankruptcy Trustee.

-The creditors may seek to be paid off in principle only through the Bankruptcy Estate. From the declaration of bankruptcy, any measures such as enforcement of creditor's claims against the debtor, any civil action against the debtor, any appeal, are banned to commence or if they already took place they are suspended automatically.

However, the creditors, whose claims are secured by an asset of the debtor (e.g., a mortgage), they are paid by the liquidation of this specific asset (unless they resign from the security, so they may be able to be satisfied by the whole of the bankruptcy estate, with the rest of the creditors). The aforementioned suspension of measures of enforcement, in principle, does not apply to the secured creditors regarding these specific assets for a period of 9 months from the declaration of bankruptcy. There are some exceptions, such as when the asset is important for the debtor's undertaking if the undertaking or a sector of it is to be sold as a whole.

-From the declaration of bankruptcy, the creditors' claims do not produce interest.

-The pending contracts in principle, after the declaration of bankruptcy they are terminated the 60th day from the declaration of bankruptcy. However, the Bankruptcy Trustee may elect to terminate them before the above date or to continue the pending contracts. If the decision that declares the bankruptcy orders to sell the debtor's undertaking (or its sectors) as a whole, the other party of these contracts, within 30 days from the declaration of bankruptcy may impose a reasonable deadline to the Bankruptcy Trustee (which cannot exceed 30 days) in order to elect whether to continue the pending

contracts or not. If the Bankruptcy Trustee does not respond in a timely manner or he refuses to perform, the other party is entitled a) to terminate the contract and b) to make a claim for compensation for non-performance, satisfied as a bankruptcy creditor.

-In principle, the declaration of bankruptcy does not affect the right of a creditor to a set off against the debtor, if the prerequisites for a set off were born before the declaration of the bankruptcy.

-Anyone who has a right over an asset, which is not owned by the debtor, may ask from the Bankruptcy Trustee its separation from the bankruptcy estate.

-Anyone who delivered goods to the debtor, under specific circumstances, may ask the Bankruptcy Trustee to return them.

-The Bankruptcy Trustee, under several circumstances, is entitled to revoke acts of the debtor, which took place from the time that the debtor stop making payments and until the declaration of the bankruptcy and they are harmful for the interests of the creditors.

Conclusion

As a final remark, the present constitutes only a brief, general outline of the proceedings and the protection of the assets and it is not a legal advice. Obviously, it may not cover all the detailed provisions of the law, as the bankruptcy and pre-bankruptcy proceedings are quite complicated, with many exceptions so, many special exceptions and provisions are not covered. For any specific situation, a creditor must seek specific legal advice from a qualified lawyer.