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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 are Bankruptcy and Special Administration, which are 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 above-mentioned bankruptcy and pre-bankruptcy proceedings, a 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 Bankruptcy/Insolvency legislation in Greece is constantly amended, mainly due to the financial crisis of the past years, so the content of the present might be altered after its publication.

I. The Pre-Bankruptcy Proceedings

A. Rehabilitation

1. The Procedure

Although the rehabilitation proceedings are included in the Greek Bankruptcy Code, they do not constitute bankruptcy proceedings. The rehabilitation proceedings of art. 99 et seq of the Greek Bankruptcy Code 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 (60% of its creditors including the 40% of the secured 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.

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, anyone who has a legitimate interest (e.g. the debtor, a co-debtor, a creditor, a guarantor) may apply, only once, to the competent court for protection of the debtor's assets by ordering Provisional Measures, as an injunction. 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 one who has a legitimate interest (as above) may apply to the court for a Provisional Order (the provisional order is a "fast track" procedure which takes place usually within a couple of days and there is not a formal hearing. The president of the court examines the application and it is at his/her discretion to order the 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.

The competent court may revoke or modify the provisional measures at any time 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, the court can also decide to apply the protection to the guarantors of the debtor as well.

The above-mentioned protection may bind all or several of the creditors (depending on the court's decision), also including 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, it 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 between the debtor and its creditors has been concluded and 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 106 of the Greek Bankruptcy Code (see below par. 2.2.2). Secondly, an additional, parallel protection 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 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 106 of the Greek Bankruptcy Code, 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 of transferring of the real estate property and the business equipment on behalf of the debtor.

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 above-mentioned protection is granted only once, and it cannot exceed the 4 months. 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*.

During the above-mentioned provisional protection, any time limit for bringing a claim is prolonged.

The automatic protection does not apply to the debtor's guarantors. A provisional protection may apply to them only by a court decision in the procedures mentioned above (paras 2.1.1-2.1.2).

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 (if it is validated, as the Court can deny the validation for several reasons- e.g. it estimates if the business of the debtor will become viable, if the creditors who



are not part of the agreement are in a worse position than if a bankruptcy took place, if the agreement is illegal or product of intentional misconduct or the parties are in bad faith etc.), 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 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 quite new procedure, established by the L. 4469/2017. The law (as amended several times) imposes several prerequisites in order to be a debtor eligible for these proceedings (e.g. if until 31.12.2018 had a debt to a financial institution or the State, or court decision against it, a minimum total debt 20.000€ etc.). The procedure **does not include**

any debts created after 31.12.2018. Furthermore, the creditors whose claims are considered rather small according to the detailed provisions of the law are excluded by the procedure and are not bound by it. The deadline to apply for the Out of Court Workout is 20.04.2020.

The Out of Court Workout is a procedure done mainly electronically and the intervention of the court is limited. The procedure commences when the eligible debtor (and, in principle, its co-debtors) files an on-line application to the competent Authority appointed by the law, the Special Secretariat for the Administration of Private Debt. It can also be commenced by several types of creditors (the State, financial institutions etc.). With the application the debtor submits a list of its creditors, its assets, and a business plan for the restructuring of its debts. Subsequently, a Coordinator is appointed by the Special Secretariat for the Administration of Private Debt, who coordinates the whole procedure for the restructuring (e.g. notifies the creditors and sends to them an extract of the debtor's application, transfers the propositions/business plan of the debtor to the participating creditors, receives the counter-proposals of the creditors), until a settlement is reached (or not).

The debtor or its creditors may also submit the settlement that was reached to the competent court for validation.

2. The Protection

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

From the time that extract of the debtor's application has been submitted to its creditors by the coordinator and for a 90-day period any measure of enforcement of claims (either



individually or by collective proceedings-e.g. bankruptcy- including in principle, any injunctions) freezes automatically by the law. Any relevant action that commences during the above period is void. The above period can be prolonged until the end of the procedure, if the procedure was delayed due to extensions granted to creditors to proceed with some of the actions outlined in the law, regarding only these creditors.

The above 90-day period can also be prolonged by an application of the debtor before the competent court, for maximum 4 months and if there is consent of most of the creditors.

Moreover, any creditor may ask from the competent court to lift the protection granted if it would have as a result his irrevocable damage.

In any case, the above automatic protection is lifted when the procedure of the settlement is not fruitful or if most of the creditors decide that.

It must be noted that the above freezing of the enforcement proceedings is followed by the restriction of the transfer etc. on behalf of the debtor of its assets (excluding any transfer that has to do with the day-today business).

From the time that the debtor or its creditors submit the settlement that was reached to the competent court for validation and until the validation of the restructuring agreement by the competent court, any measure of enforcement of claims (either individually or by collective proceedings-e.g. bankruptcy) freezes. This also includes the prohibition, in principle, of any injunction against the debtor.

If at the time of the filling of the application any enforcement procedure is pending, it freezes.

Many of the deadlines of the law 4469/2017 has been suspended for 3 months according to Legal Act of 30.03.2020 due to COVID-19 crisis.

II. Special Administration

1. The Procedure

The Special Administration is a fast-track procedure for the liquidation of the debtor's undertaking either, or parts and it is regulated by articles 68 et seq of the L. 4307/2014. Its target is not the rehabilitation of the debtor or the restructuring of its debts, but it is focused on liquidation. If the debtor is in permanent and general inability of payments, any creditor(s) who represents the 40% of its total liabilities may apply to the competent court in order to appoint a Special Administrator who will proceed to the liquidation, within the tight time limits provided by the law. The special administrator substitutes the bodies of the company (if the debtor is a company) e.g. the General Assembly, the Board of Directors etc. He/ she proceeds with the liquidation of the undertaking by a public auction and the results of the auction are validated by the competent court. Subsequently, the special administrator distributes the price of the liquidation to the debtors who have announced their claims before him/ her. If the procedure does not bare fruits, the bankruptcy of the debtor follows.

2. The Protection Granted to the Debtor in Special Administration

A protection may be granted to the debtor during two different stages: **a)** before the special administrator is appointed by the court and **b)** after the special administrator is appointed. More specifically:

2.1 The protection before a special administrator is appointed

Before the appointment of a special administrator by the court, any person who has a legitimate interest (e.g. a creditor) may apply to the competent court asking for



provisional measures. The court is not bound to order the provisional measures. The measures, which the court may grant, are the same with the ones in bankruptcy and rehabilitation proceedings (see above, par. 1.2 of the Rehabilitation Proceedings).

The protection granted covers automatically any co-debtor(s) (and according to an opinion the guarantors as well) and it includes (also automatically) the restriction to the debtor and any co-debtor(s) to transfer any real estate property or assets of the undertaking.

The application for special administration also freezes any pending rehabilitation or bankruptcy proceedings.

2.2 The protection after a special administrator is appointed

After the creditor's application for special administration has been accepted by the court and a special administrator is appointed, a protection against the undertaking's assets is granted automatically. The protection includes the suspension of the individual claims, including any enforcement of creditor's claims against the undertaking's assets (e.g. a seizure), any civil lawsuit against the debtor or any appeal on a pending lawsuit etc., including also any enforcement proceedings on behalf of the State and it extends for the whole duration of the special administration proceedings.

It must be noted that the special administration proceedings neither constitutes a serious reason for the termination of the contracts that are in force, nor a reason for the invoking of any administrative licenses.

III. 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 or by reorganizing the debtor's undertaking.

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 probable insolvency can also be sufficient when the debtor applies and simultaneously submits to the court a reorganization plan for its undertaking.

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 and it decides the date for the meeting of the creditors.

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 court may order as an injunction whatever provisional measure it 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.

The provisional measures can also be ordered by a provisional order by the president of the court, until the hearing of the application for provisional measures.

Any ordered provisional measure stops automatically, when the decision of the court that orders the bankruptcy (or dismisses the application) is issued.

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.

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 above-mentioned suspension of measures of enforcement, in principle, does not apply to the secured creditors regarding these specific assets. There are some exceptions, such as when the asset is important for continuing the business of the debtor. The suspension does not include the assets of any guarantors, co-



debtors or third parties or debtor's assets that are not important for continuing its business.

- Regarding the pending contracts the following must be noted:

Regarding the instant contracts, the Bankruptcy Trustee, after permission is granted by the Supervising Judge, may continue the pending contracts. If the Bankruptcy Trustee does not exercise the right to continue the pending contracts within ten (10) days of the submission of his report, the other party of the contract shall be entitled to ask from him to elect whether to continue or not, within a reasonable time. If the Bankruptcy Trustee does not respond timely or he refuses to perform, the other party is entitled a) to withdraw from the contract and b) to a claim for a compensation for non-performance, satisfied as a bankruptcy creditor.

Regarding the contracts of a lasting nature, in principle, they remain in force. However, any right of termination by the law or a contract is not affected.

- 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 from 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.

3. Reorganization Plan

Alternatively, to the liquidation of the debtor's assets, a reorganization plan can be agreed. It can be submitted either by the debtor or its creditors (under conditions) and it constitutes a pre-packaged plan.

The reorganization plan must include several issues, such as sufficient information about the financial situation of the debtor and a comparison of the satisfaction of the creditor's claims with the liquidation, a description of the reorganization measures (it is open to the parties, with some limitations) and the reorganization of the rights of parties (such as creditors, co-debtors, guarantors).

The competent court sets a time limit for the acceptance of the plan by the debtor and the creditors accordingly. A "special" assembly of the creditors votes and decides on the plan. Subsequently it is verified (or not, under conditions) by the competent court.

The reorganization plan, after it is verified, it binds, in principle, all the creditors, even those who did not participate in the "special" assembly or voted against it.

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, and they are constantly amended, so, many special exceptions and provisions are not covered. For any specific situation, a creditor must seek specific legal advice from a qualified lawyer.