KARATZAS & PARTNERS

Insolvency Alert

New insolvency regime: regulations and evaluation

INTRODUCTION

Law 4738/2020 entitled "Regulation of debts and provision of a second chance" (hereinafter referred to as the "**new Law**") transposing the European Directive 2019/1023 on preventive restructuring frameworks and discharge of debt, includes in a single text all tools and insolvency proceedings.

Pursuant to the explanatory memorandum, the main principles of the new Law, which will enter into force on 01.01.2021, are summarized as follows: simplification of existing procedures, digitization through the establishment of the Electronic Solvency Register, maintenance of viable enterprises through the extrajudicial debt settlement mechanism and rehabilitation process and, last but by no means least, provisions for vulnerable debtors.

The new Law comprises two sections: (a) pre-bankruptcy procedures including the early warning mechanism, the extrajudicial debt settlement mechanism and the rehabilitation process, and (b) the bankruptcy proceedings. A detailed analysis of the main points of the new Law is given below.

A. PRE-BANKRUPTCY PROCEDURES

1. Preventive insolvency and extrajudicial debt settlement mechanism

The new Law introduces in the first stage effective preventive mechanisms of early warning and information, so that insolvency is avoided, while it also introduces an integrated framework for dealing with insolvency, through an extrajudicial debt settlement mechanism that concerns individuals and legal persons. At the initiative of creditors or at the request of debtors, debtors, individuals or companies, will be given the opportunity to enter into debt restructuring agreements. In addition, the time frame for debt repayment is significantly increased to up to 20 years, while in some cases write-offs of debts to the State and Social Security Institutions are provided.

1.1 Early warning mechanisms

More specifically, as part of an effort to prevent insolvency, a procedure which allows debtors to have access to clear and transparent early warning tools is initially established. These specific "tools" include electronic debtor notification mechanisms and advisory services provided by Borrower Service Centers and Professional Bodies, such as Chambers or Professional Associations. Borrowers have access to information referring to the availability of access to early warning tools, as well as to debt restructuring procedures and measures, through the website of the Special Secretariat for Private Debt Management. In more detail, **an electronic mechanism is introduced for the early warning of debtors belonging to three (3) levels of insolvency risk, low, medium and high, for individuals as well as legal entities,** which is supervised by the Special Secretariat for Private Debt Management and is **provided through a special electronic platform.** Any individual without business activity, (i.e pensioners or employees) who is classified as medium or high risk level, can contact the Borrower Service Center (KEYD) or the relevant Borrower Service Office (G.E.Y.D.) in order to receive free specialized services and advice regarding the legal framework, the possibilities of its protection, but also the management of its finances. Similarly, any individual who earns income from a freelance profession, but also any individual or legal person who earns income from a business activity, can apply for similar services to professional chambers or associations.

1.2 Extrajudicial debt settlement mechanism

The new Law introduces an autonomous extrajudicial debt settlement mechanism referring to all natural and legal persons with limited exemptions. This is contrary to the previous law (Law 4469/2017), since now **all categories of natural persons are included and not just those engaged in business**. In particular, creditors and debtors are given a new framework for formulating debt settlement proposals and avoiding the risk of insolvency. Specifically, it is possible to settle debts, which refer to financial institutions, the State and Social Security Institutions, while debts to individuals and businesses other than financial institutions are excluded from the scope of this mechanism.

The procedure can be initiated either at the request of the debtor through an electronic platform of the special secretariat for private debt management, or at the initiative of the creditors by notifying the debtor by a letter. In fact, the financial institutions are provided with a discretion regarding the option of submitting a debt settlement proposal, as they do not have the obligation to submit proposals in all cases where a relevant application is addressed to them. However, if the majority of the financial institutions accept an application submitted and agree to the formulation of a specific debt settlement proposal, the results are binding for all the creditors.

Those debtors who have the majority (90%) of their debts to the same creditor, but also those who have debts up to 10,000 Euros are excluded from the possibility of submitting an application. Legal entities under liquidation and those debtors who have previously applied for protection through other bankruptcy or pre-bankruptcy mechanisms, such as filing for bankruptcy, rehabilitation, the previously applicable law on over-indebted households or the previously enacted extrajudicial settlement mechanism, are also excluded provided that they have not previously withdrawn their respective applications under such laws.

1.3 The restructuring agreement

Once the application is submitted, financial institutions which are creditors can submit a settlement proposal to the debtor. If the proposal secures the consent of the debtor, the majority of participating creditors as to the value of the relevant receivables (60% of the total) and at least the percentage **of participating creditors with special privilege, such as a pledge or mortgage (40% of the claims secured by a special privilege), the restructuring agreement is signed between the consenting creditors and the debtor**. If there are debts to the state and to social security institutions, whether the restructuring agreement will eventually be signed is subject to their consent. The debtor is also given the opportunity to submit a request for mediation, but the relevant provisions give a limited period of 30 days for negotiations to be conducted. A corresponding limitation period applies to the signing of the restructuring agreement, because if this is not accomplished within two months, the entire process becomes fruitless.

1.4 Suspension of enforcement proceedings

Of particular importance is the fact that from the submission of the restructuring application until its completion, all **enforcement measures (such as litigation or payment orders) are suspended against debtors in relation to the requirements stated in the application, as are criminal prosecutions.** As an exception, the suspension does not cover actions scheduled within three (3) months from the date of submission of the settlement request by the debtor, or any procedural action in preparation for the auction by a secured creditor (including seizure). This provision is intended to discourage the abusive submission of applications as a means of delaying enforcement. Suspension of individual and collective enforcement measures against the debtor also occurs in the event that a restructuring agreement is reached.

1.5 State and Social Security Institutions participation

The State and Social Security Institutions can restructure and write- off debts to them. If an agreement is reached by the financial institutions and the debtor, the State can participate in the restructuring, if: **a) the requirements of the State and the social security institutions do not exceed 1,500,000 euro per institution; b) the State and social security institutions represent a total amount of claims smaller than the total claims of financial institutions against the debtor; and c) the agreement does not give the State and the social security institutions treatment that is worse than if the debtor went bankrupt.** Should the aforementioned requirements be met, the acceptance of the restructuring agreement by the State and the Social Security Institutions requires no further action by the competent authorities. The acceptance is presumed once 15 inactive working days beginning from the notification of the agreement have been lapsed.

There are also some restrictions concerning public debt and social security debt restructuring agreements. **It is specifically possible to repay the debt in up to 240 monthly installments, the amount of which cannot be smaller than 50 euros**. Grace periods are not permitted to be provided for repayment of debts, while, if the restructuring agreement provides for write-offs of debts, they will be done in order of seniority, from the oldest debt to the newest, based on the time of registration of the debt in the books of receivables. In addition, debts to the State that are regulated under the restructuring agreement, do not include further interest or late payment surcharges.

It should also be noted that the entry into effect of a debt restructuring agreement presuming the consent of the State or Social Security Institution suspends criminal prosecution and enforcement measures against debtors, such as in the case of financial institutions. Specifically, regarding the State, compulsory measures and the continuation of the enforcement process against claims, movable and immovable property against the debtor are suspended; this suspension does not apply to the overdue installments of the contract. Criminal prosecutions are still suspended while, if: a) at least the first installment of the arrangement has been repaid; b) the debts that are not subject to the agreement have been repaid or settled in a lawful manner, with suspension of collection or arrangement for partial payment; and c) required income tax and value-added tax declarations have been submitted, as well as Detailed Periodic Declarations (APD), within three (3) months from the expiration of the deadline for their submission, at the request of the debtor, the Tax Administration decides that the seizures imposed on third parties that burden the debtor do not cover future claims.

Seizures in the hands of third parties that have been imposed exclusively for debts subject to the agreement are lifted at the request of the debtor, provided that at least seventy-five percent (75%) of the total amount to be paid to the State has been paid. A corresponding suspension effect on enforcement measures and criminal prosecutions also applies to social security institutions.

Another important innovation is that bilateral debt restructuring agreements between the State and the Social Security Institutions are allowed, while the participation of the State and the Social Security Institutions in a restructuring agreement entails the automatic abolition of previous regulations for debts covered by the restructuring agreement.

1.6 Consequences

With payment of the total of the installments that are due to each creditor, the arrangement is successfully completed and the portion of the claim that exceeds the amount of the arrangement is extinguished, without prejudice to any rights of each creditor towards co-debtors or guarantor creditors of the debtor or rights of creditors subject to ownership.

Conversely, if the debtor becomes overdue in terms of payments in the restructuring agreement, with the consequence that the total overdue sum exceeds either the value of three (3) installments or the value of at least three percent (3%) of the total amount owed under the agreement that was reached, any creditor can terminate the restructuring agreement, which entails the loss of the arrangement with respect to that creditor and the revival of claims.

1.7 Subsidy

Of particular importance is the fact that debtors who have settled, or who have not delayed for a period exceeding 3 months, their debts to financial institutions, the State, and Social Security Institutions, are provided a subsidy to repay the loans secured by their main residence, for 5 years from the date of application. In order to receive the grant, the total debt must be at least 20,000 euro. In addition, the balance of the debt must not exceed 135,000 euro for a single-person household, increased by 20,000 euro for each additional member, up to a maximum of 215,000 euro per debtor. Finally, the possibility of being included in the subsidy arrangement depends strictly on meeting income criteria.

2.Pre-bankruptcy rehabilitation process

Generally, the rehabilitation process remains the same, but in the scope of harmonization with the Directive, **an effort is made to simplify and solve chronic problems to facilitate debtors and creditors so that it becomes more attractive**. The new Law specifies with more clarity the content of the rehabilitation agreement and the application procedure. A business plan and an expert's report are again required, while the expert must be selected from the newly established Registry of Experts. Jurisdiction remains with the competent Multi-Member Court of First Instance, not permitting any legal remedies except for appeal against the decision rejecting the rehabilitation or a third-party opposition. In the context of acceleration of proceedings, the Court is given the opportunity, in case no objections are filed against the application, to issue a final judgment without a detailed reasoning.

2.1 Creditors' categories, consent percentages and electronic vote

Creditors are divided into two categories (creditors with special privilege, and other unsecured creditors including those with general privilege), for the need to calculate the required percentages for consent, and according to the general rule, **consent of more than 50% of each category is sufficient.** If the above majority is not reached, the rehabilitation agreement can be ratified if there is consent from 60% of total claims and more than 50% of claims with special privilege in combination with some additional conditions (**cross-class cram down**). A clear reference and distinction is now made between **affected and non-affected creditors**, since only the former formulate the required percentages. In accordance with a new regulation introduced by the new Law, an **electronic vote** can be held between creditors to provide consent for the rehabilitation agreement.

2.2 Non-voluntary rehabilitation process

In addition, the rehabilitation agreement without debtor's consent is provided certain conditions are met, notably if the debtor is in cessation of payments, or (in the case of a corporate entity) that its total equity has decreased below 1/10 or if no financial statements have been submitted for publication for at least two consecutive fiscal years.

2.3 The principle of non-deterioration of creditors & the deemed consent of public bodies

The new Law regulates issues that had been disputed in case law and legal writing. The **principle of non-deterioration of the position of creditors** is explicitly stated, and considered to be fulfilled if, based on the rehabilitation agreement, none of the non-consenting creditors is found to be in a worse position than the one would be in the event of debtor's bankruptcy. One of the main differences/additions in the rehabilitation process is the **deemed consent** under clear conditions **of the State and the Social Security Institutions**. The provision of the new Law comes to provide a solution to a long-term problem of non-consent or opposition of public bodies to the proposed rehabilitation agreements, in many cases resulting in failure to ratify them.

The conditions that must be met cumulatively for consent of the State and the Social Security Institutions to be presumed are:

a) The certified principal debt to the relevant person or entity must not exceed 15,000,000 euro at the time the agreement is signed.

b) Based on the expert's report, the principle of non-deterioration must be confirmed.

c) The certified claims of public and insurance bodies must be less than the total claims of private creditors.

In addition, in the context of facilitation of obtaining the required consent in cases not covered by the provision on deemed consent, **explicit provision is made for discharge of liability for employees** (for public or private bodies) who consent to the rehabilitation agreement.

2.4 Exclusive responsibility of the Board of Directors (or administrator) and appointment of a special proxy

Another provision that will accelerate the rehabilitation process and provide a solution to another chronic problem is the **exclusive responsibility of the Board of Directors of the company to provide consent, without requiring a prior decision by the General Assembly**. Moreover, when a decision of the General Assembly is required according to corporate legislation, the Court may appoint a special proxy to replace non-cooperating shareholders or partners. In case the rehabilitation procedure is initiated without debtor's consent, overruling any corporate obligation, decisions of the General Assembly are not required. In this manner, the new Law seeks to limit the practice of shareholders who abusively refuse to cooperate by torpedoing the rehabilitation agreements.

2.5 Contracts and employees

In contrast to bankruptcy, submission or acceptance of the application for rehabilitation **does not constitute grounds for termination of the debtor's outstanding contracts**. Furthermore, special care and reference is made for employees, as the resolution agreement should specify the consequences of the plan in terms of their employment and their earnings. In addition, precautionary measures do not entail employees' claims except for good reason and for a specified time.

B. BANKRUPTCY PROCEDURES

3. Bankruptcy

3.1 Capability for bankruptcy and cessation of payments

The biggest innovation introduced by the new **legislation is the disconnection of bankruptcy from commercial status**. Bankruptcy is now available to all natural persons as well as to legal entities that are pursuing a financial purpose. The purpose of bankruptcy is now credit-oriented (collective satisfaction of creditors through the liquidation of the debtor's property).

The objective precondition of cessation of payments for declaring bankruptcy remains, **while criteria are established for the presumption of cessation of payments**. The debtor is presumed to be in cessation of payments when (a) their total non-performing liability exceeds 30,000 euro; (b) they do not pay overdue financial liabilities to the State, Social Security Institutions, credit or financial institutions in an amount of at least 40% of their total overdue liabilities; and (c) for a period of at least 6 months. It is sufficient that these criteria are met in relation to a significant overdue obligation, **while the selective satisfaction of debts does not preclude cessation of payments,** which may be evidenced by the failure to meet even one significant debt that has fallen due.

3.2 Petition for bankruptcy, jurisdiction and the bankruptcy officer

The competent Court remains the Multi-Member Court of First Instance of the district of the center of main interests of the debtor or of the main residence of the natural person, which shall adjudicate according to the provisions of the non-contentious jurisdiction. Interventions in support of the petition for bankruptcy may be exercised orally**,** but for **opposing interventions, a pre-trial filing is now required** (exercised with an independent petition no later than three days before the hearing of the bankruptcy application).

An application for bankruptcy may be filed by one or more creditors with a legal interest, in addition to the debtor and the prosecutor of the court of first instance. A bankruptcy application can now include a claim for liquidation of all assets of the undertaking or its individual operating groups, provided that it is submitted by creditors representing at least 30% of the total receivables burdening the debtor, including 20% of secured creditors.

The bankruptcy officer is now nominated in the application for the declaration of bankruptcy and the Court is provided with the written statement of acceptance of such nomination. In this way, the appointment of the bankruptcy officer becomes considerably accelerated, compared to the previous law where denials of appointment were common leading to a requirement for additional court proceedings. The bankruptcy officer must be an insolvency professional.

3.3 Digital Insolvency Registry

In addition, in order to facilitate the process and for transparency and faster notice to all involved parties**, the Digital Insolvency Registry is established with a cross-border character, the data of which are publicly available**. The bankruptcy petition and all relevant accompanying documents as well as any other publication required by the new Law shall now be registered in the Digital Insolvency Registry.

3.4 Filing obligation

The debtor must file for bankruptcy immediately upon cessation of payment, **within thirty days at the latest**. The civil liability of directors of the companies (and of members who exercised influence over the executive membership) remains in effect in case the bankruptcy application is not submitted in time and is strengthened in that creditors it now covers all losses of creditors whose claims were created between the thirtieth day after the cessation of payments and the day after the bankruptcy petition was filed. In this way the liability risk for trading while insolvent is substantially increased.

Bankruptcy can also be declared with a brief reasoning in case the petition is filed by the debtor and there are no opposing interventions.

3.5 Post-bankruptcy assets

While the post-bankruptcy estate is not subject to the claims of pre-bankruptcy creditors, an exception is introduced. Specifically, **the bankruptcy assets include a portion of the annual income** (e.g. salary/pension) of bankrupt people that exceeds reasonable living expenses for a period of thirty-six months.

An exemption is provided when the application for bankruptcy is filed by the debtor and it is judged that it has a main residence and/or other fixed assets that exceed 10% of its liabilities but no less than 100,000 euro. However, if their annual income exceeds five times the reasonable living expenses, the excess amount is included in the bankruptcy assets.

3.6 Pending contracts and employees

The declaration of bankruptcy now **causes automatic and irrevocable termination of all pending and permanent contracts of the debtor within sixty days from the declaration of bankruptcy**, unless the bankruptcy officer deems that they support the smooth running of the business or improve the liquidation value of assets and declares in writing that they wish for their continuation or immediate termination. Regarding contracts with employees, **the bankruptcy officer may request, within the above deadline, new contracts to be drawn up** with the same working conditions, but this plan must be approved by the judge-rapporteur and the creditors' assembly. In addition, special and flexible options are provided to the bankruptcy officer in handling outstanding contracts, when the decision declaring bankruptcy provides for the liquidation of the bankruptcy estate as a going concern.

3.7 Revocation, creditors' assembly and new money

Bankruptcy revocation (acts of compulsory and potential revocation) remains but is specified and defined more precisely. Now, creditors' assembly takes on a more active role. Within the framework of the flexibility of bankruptcy procedures, the bankruptcy officer, with the permission of creditors' assembly, may receive financing to cover all kinds of costs and expenses of the bankruptcy.

3.8 Creditors' announcements and ranking

Announcement of creditors now takes place through submission of all documents to the Digital Insolvency Registry. **The announcement deadline is extended** from one month to three months, in an attempt by the new Law to reduce the objections against the ranking table that delayed the distribution. In addition, **oppositions do not suspend distributions that have already been ordered**. The new Law aligns with the Code of Civil Procedure in determining the ranking of claims.

3.9 Liquidation of the bankruptcy assets

It is crucial that the liquidation of the debtor's assets begins immediately. The liquidation of the debtor's business **as a whole or as operating units** could be considered to operate within the same regulatory framework as the special administration procedure (L. 4307/2014). The tender takes place through the e-auction electronic platform, with the assistance of a notary for the purpose of full transparency. **No minimum price is set when the whole business is liquidated**. In addition, as the biding price is now determined by the rules of supply and demand, in the event of multiple fruitless auctions, the liquidator can proceed with gradual reductions in price. The procedure and all the details are defined in detail, step by step, in the new Law. In addition, tax relief and restrictions on the rights and remuneration of persons involved in the process (such as land registrars) are provided in order to motivate interested bidders.

3.10 Small scale bankruptcies

The small- scale bankruptcy procedure is amended and simplified, applying when the debtor-legal entity is characterized as a microenterprise[1] or the debtor-natural person meets certain financial criteria[2]. This process is characterized by speed and automation, as the application is submitted electronically through the Digital Insolvency Registry by the debtor or creditor(s) and remains published for 30 days. If no intervention is brought or if the intervention is concerned only with the appointment of a bankruptcy officer, the application is automatically accepted, and the bankruptcy is declared. If an intervention is filed (electronically in the Registry), the petition for bankruptcy submitted to the Magistrates' Court for the case to be heard. Only an appeal is allowed against this decision.

In small scale bankruptcies, in order cessation of payments to be presumed, the debtor must not pay at least 60% of their total overdue monetary liabilities to the State, Social Security Institutions, credit or financial institutions for a period of 6 months, provided that the non-performing liability exceeds 30,000 euro.

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[1] Minor entities are entities that on the date of their balance sheet do not exceed the limits of at least two of the following three criteria: a) Total assets: 350,000 euro. b) Net turnover: 700,000 euro. c) Average number of employees during the period: 10 persons.

[2] Assets of up to 350,000 euro.

3.11 Termination of bankruptcy process

The bankruptcy now ceases automatically after the passage of **five (5) years** from its declaration, which can be extended for an additional two (2) years by a decision of the meeting of creditors.

3.12 Debt release

One of the primary legislative provisions of the new Law is the conditional release of natural person (non-merchant) debtors from their debts, which also justifies the title of the legislation as providing a second chance. The release usually occurs in **36 months**, unless the assets of the bankruptcy include the main residence and/or other fixed assets that exceed 10% of the debtor's liabilities but not less than 100,000 euro, in which case the release occurs after one (1) year.

Release occurs for any debt regardless of whether it has been announced, unless an appeal is filed for specific reasons mentioned in the new Law. The release extends, under certain conditions, to the representatives of legal entities.

The release process does not affect the continuation of the liquidation of the bankruptcy estate and the respective distribution to the creditors, while the debtor's release from debt does not release any co-borrower or guarantor.

3.13 Evaluation

The Legislator tries to modernize bankruptcy procedures by utilizing the evolution of technology in order to incentivize both debtors and creditors to use the provisions of bankruptcy law, instead of procrastinating, since aside from the provisions on recovery, it now includes provisions relating to the re-integration of debtors into business life.

4. Vulnerable debtors

4.1 Transfer of main residence to a special agency – right of lease and repurchase

Protection of the main residence of debtors that was provided as a possibility for debtors who fell within the protective provisions of Law 3869/2010 has already been abolished.

Regarding main residences, the new Law includes a specific chapter which, however, concerns a specific category of debtors, the "**vulnerable**", for whom it provides only the possibility, either in the event they are declared bankrupt or when enforcement is expedited at the expense of their main residence, **to transfer the property right they hold on their main residence** to a special acquisitions and re-leasing agency (hereinafter the "Agency"), and **continue to reside** there for a period of up to 12 years, paying monthly rent and then having the option to **re-purchase** it at a price equal to its commercial value at the time of repurchase.

4.2 Criteria

In order to be considered "vulnerable", the debtor must meet certain **very strict income, property, and other criteria,** similar to the criteria that must be met in order to be eligible for housing benefits. Currently, those criteria are:

- The **total income** of the household, i.e. all persons living under the same roof as the debtor, should not exceed 7,000 euro per year, in the case of a single-person household, increased by 3,500 euro per member of the household, with a maximum limit of 21,000 euro per year;
- The total value of their **real estate** cannot exceed, in the case of a single-person household, 120,000 euro, increased by 15,000 euro for each additional member, with a maximum of 180,000 euro;
- The total **household deposits** and/or the current value of shares, bonds, etc., cannot exceed 7,000 euro in the case of a single-person household, increased by 3,500 euro for each member of the household, with a maximum of 21,000 euro;
- The debtor should not fall under the provisions of the **luxury living tax**, and should not incur expenses for salaries for yacht crews, expenses for tuition fees for private schools exceeding one thousand five hundred (1,500) euro, as well as expenses for housekeepers, car drivers, teachers and other staff, and there is a limit on the amount of interest on deposits for all members of the household; and
- The debtor must have been a legal and permanent resident of Greek territory for the last five years.

4.3 Process and repurchase

Regarding the **process** of renting the main residence and its subsequent repurchase, the following should be noted:

Initially, the Agency, which will acquire the main residence of vulnerable debtors and later lease it back to them, will be a private-sector legal entity which will contract with the State under a concession contract, on the basis of which it will undertake both the obligation to acquire and lease and the obligation to transfer it again to each of them, under the terms of the new Law.

The debtor, in order to initiate the relevant procedure, must **submit their request** either to the auctioneer (in case enforcement is accelerated against their main residence) or to the bankruptcy officer (in the event that they have been declared bankrupt), and in any case **within a deadline** of sixty calendar days either from the date of the seizure document or from the publication of the decision declaring the vulnerable debtor bankrupt in the Electronic Solvency Registry, respectively.

The Agency, in order to acquire the property right of the debtor over their main residence, will have to pay the **transfer price**, which is equivalent to the **commercial value** of the property, to either the auctioneer or the bankruptcy officer, as the case may be, again within a specific deadline, which in the first case is no later than five (5) business days before the date of the auction, and in the second case is the last business day of the six-month period following the publication in the Electronic Solvency Registry of the decision declaring the debtor bankrupt.

Note that the commercial value of the above property is determined by a **certified appraiser**, who is appointed by the Agency at its own expense, while **all costs** required for the transfer are also paid by the Agency and are withheld from the transfer fee.

If the relevant procedure is initiated on the grounds that enforcement is being expedited against the main residence of the debtor, the above payment of the price by the Agency, in addition to transfer of ownership to the latter, shall also result in **cancellation of the auction**.

If the main residence belongs to **several co-owners**, the latter must on the one hand **cooperate** with the debtor when submitting the initial request, and on the other hand **declare** that they accept the leasing of the property from them, as well as that they waive any right over the lease or their right to challenge the lease for any reason until its contractual termination.

At the end of the transfer process, the Agency acquires the property right of the debtor free from any encumbrance or claim by a third party.

4.4 Lease agreement

After the above transfer, the debtor, in order to continue living in their main residence, shall enter into a **lease agreement** with the Agency, the duration of which will be **12 years**, while the **rent** will be determined in accordance with a decision of the Minister of Finance, which has not yet been issued. If the debtor is entitled to a **housing allowance**, then the amount corresponding to it will be paid directly to the Agency, and this will pay a portion of the rent.

4.5 Termination

The lease in question shall be **terminated** in two cases: a) if the debtor does not pay three rent payments to the Agency and, if they are notified by the latter, does not repay all debts owed within one month from the date of the notification; and b) if the competent bankruptcy court finds that the debtor is not discharged from their debts.

The termination in both above cases occurs **automatically**, i.e. without any other action being required, in the first case after the expiration without action of a period of one month from the notification of the Agency, and in the second case with the expiration of a period of one month from the final judgment. Any **termination** of the lease as above shall imply, aside from the obligation of the debtor to immediately return the use of the residence to the Agency, the **abolition of the right to repurchase** it as well.

4.6 Right to repurchase

Upon the contractual expiration of the above lease agreement, i.e. after 12 years, the new Law provides the debtor with the **right to request to repurchase** their main residence from the Agency, by paying a price, the amount of which is not specified in the new Law, but will be determined later by a special decision of the Minister of Finance. It goes without saying that if the debtor does not intend to exercise the right to repurchase their main residence, upon the expiration of the lease they must return the use of the property to the Agency, as there is no possibility of extending the term of the lease.

The above right of repurchase may also be exercised at a time prior to the contractual termination of the lease, **provided** that the debtor **shall pay** to the Agency, in addition to the repurchase price, the current value of **any rent payments** due until the end of the lease period, i.e. 12 years.

The rights of the debtor under the lease, as well as the above right of repurchase, under the new Law, **cannot be transferred** by the debtor, except in the case of universal succession.

4.7 Evaluation

In conclusion, the new Law provides to a category of debtors, who meet very strict income and property criteria, the opportunity to continue living in their main residence by paying rent for a period of up to 12 years, and the right to repurchase it either at the end of the period or, under certain conditions, earlier, defining in its provisions the **general framework** of the process while many specific but essential issues, such as, what will be the specific terms of the lease agreement, what amount will be the rent and repurchase price of the main residence, other obligations and rights of the Agency and the debtor, regarding the main residence, the lease agreement, etc. are not defined in the new Law **but will be determined later by a decision of the Minister of Finance.**

Compared to the above new Law, Law 3869/2010, which regarding the protection of the main residence has already been repealed, was more favorable to debtors as it **did not provide such strict criteria**, and therefore more debtors could apply for the protection of their main residence.

However, the provisions of the law were abused, with many debtors resorting to it primarily to obtain suspension of enforcement, that due to long delays lasted for many years. Thus, the law endangered the stability of the banking system, while simply postponing the solution of the problem of over-indebted households. To the contrary, no such delays are expected under the new Law, while in combination with the provisions for debt relief, it enables debtors to start over from the beginning, having lost ownership of their home, but escaping the trap of excessive debts.

CONCLUSION

The general reform of the Bankruptcy code, entailing all insolvency proceedings in a common regulatory framework was imperative in order to address private debt in an efficient manner. The new law acknowledges and tries to solve practical deficiencies of the previous law, such as the defamation accompanied bankruptcy or long-lasting procedures. It gives incentives for use of its tools to both debtors, providing for early warning mechanisms, extrajudicial settlement, second chance and discharge of debt, and creditors, providing non-voluntary rehabilitation, immediate liquidation of bankruptcy assets and faster distribution procedures.

The new Law does not provide for fundamental changes in terms of rehabilitation, which is considered a successful regulation as it has been widely implemented in practice while the reform in bankruptcy is significant in order to become more attractive to both creditors and debtors.

Lastly, the main residence is protected to the best interest of both parties.

The new regime incorporates innovative mechanisms and tools in order to facilitate and upgrade the insolvency procedures in Greece. Their effectiveness remains to be evaluated following considerable time of implementation.

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