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SMALLER PRACTICE FEATURE

Quasi-insolvency Proceedings for Non-merchant Individuals



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seem reluctant to reach an out-of-court settlement with their debtors. It has been maintained by some that the pursuit of such a settlement imposes an unjustified financial burden on the debtor as well as a further delay to the procedure and Hence, the abolition of this debtor's obligation has been argued as being of the paramount importance.

The Greek Insolvency Code has always applied to merchants, whether individuals or legal entities. Individuals other than merchants (and similarly other persons who are not involved in commercial activities, e.g. not-for profit entities) are unable under the Greek law to escape the trap of insolvency and to manage their debts.

The current brutal economic crisis in Greece has made the need for such legislative intervention all the more pressing. A combination of declining income and mounting interest rates, combined with the absence of new consumer credit has left many middle income families unable to meet their debts as they fall due.

Faced with these external pressures in 2010, the Greek Parliament introduced (Law No. 3869/2010, as amended by art. 85 of Law No. 3996/2011) certain protective measures for individuals facing financial distress. Should debtors' estates, as well as their current and foreseeable income, be insufficient for the satisfaction of their creditors' claims, non-merchant individuals may agree to the partial payment of their debts on favourable terms. Debtors will then be discharged from all their remaining debts provided that they honor their obligations under their repayment plan or any corresponding court decision.

Any non-merchant debtor who is genuinely unable to meet its financial obligations as they become due and payable (a test identical to the insolvency threshold as established by the Greek Insolvency Code) may benefit from the protection introduced by the aforementioned law.

The law provides relief against all types of debts, both present and future, excluding debts incurred within one year prior to the filing of the petition for the debts' settlement. There is also relief from debts attributed to intentional wrongdoing, fines and penalties imposed by public authorities, state taxes and contributions owed to social security organisations.

An individual seeking relief under these provisions must first attempt an out-of-court settlement with its creditors. The establishment of such an obligation has raised concerns for some researchers and legislators, given that in the vast majority of cases, credit institutions

In other cases, there are significant grounds for both debtors and creditors to exploit the out-of-court settlement phase. The reason for doing so is that the new law enables debtors to conclude more flexible arrangements with creditors. They may agree on lump sum payments, they may reduce debt by providing guarantees and they may protect assets of the debtor by means not available outside this legislation. Debtors may also avoid any further costs associated with the judicial procedure. Even if debtors violate an agreed upon out of court arrangement, they are not restricted from repeating the process since the law explicitly provides that only judicial debt settlement or discharge is available once. Creditors may obtain swifter repayment of their debts and they may obtain a higher level of repayment than would otherwise be possible.

A creditor may within six months following the failure of any attempt to reach an out-of-court settlement file a petition for the settlement of its debts before the Magistrates' court of the district in which the debtor has its habitual residence. The petition must include information relating to the debtor's property, the debtor's current and foreseeable income, as well as the income of the debtor's spouse. The petition must also contain a list of all creditors of the debtor and the sums owed to the debtor, divided into principal, interest and expenses, as well as a debt arrangement plan that will reasonably match creditors' interests with the debtor's assets, income and marital status.

An individual debtor may file a petition for the imposition of a moratorium on all enforcement rights and remedies of creditors against it. The moratorium will last until the order on the petition for the settlement of debts is granted. As soon as the Court imposes a stay, any disposal of the debtor's estate is precluded.

The debtor must serve the petition on all creditors. This can be costly in Greece and may thus render the procedure less attractive to insolvent individuals. A less expensive alternative (i.e. the establishment of a reduced bailiff's fee when compared to the service of other legal documents) is possible. Service of a petition does not stop interest accruing on secured claims (contractual interest rather than default interest applies). For unsecured claims, by contrast, interest ceases to accrue from service of the

petition. Within two months of the service of the petition, creditors may consent to the plan or expressly reject it. The statute creates a non-rebuttable presumption of consent to the plan by those creditors who failed promptly to provide comments on the plan.

The Court will ratify the plan as filed or as amended if no creditor opposes the plan or all creditors either explicitly or implicitly consent. The court will also ratify the plan if creditors representing the majority of debts, including all secured creditors' claims and creditors representing the majority of debts attributed to labor claims either explicitly or implicitly, consent to it.

Alternatively, the Court will determine a compromise plan, taking into consideration the debtor's assets, current and potential income, possible spousal contributions and the needs of individual debtors and their respective families. Subsequently, the Court will order the making of monthly payments to the creditors for a period that may not exceed 4 years. All creditors' claims rank equally. If the debtor has immovable property that may be liquidated, the Court will appoint a liquidator and it will order the realisation of the debtor's estate. In such an occasion, secured creditors' claims are treated as priority claims. Following the settlement of secured creditors' claims, unsecured creditors will rank *pari passu* for payment of the sums owed to them.

An important innovation under Greek law in comparison to corresponding foreign legislation is a provision where the debtor may seek relief from the sale of the family home, in which case the Court will order the monthly payment of an amount that may not exceed 85% of the market value of the family home. These payments cannot be made for periods in excess of 20 years. This 20 year payment schedule will start following the lapse of the four-year period, described above. The preservation of the family home does not discharge the debtor of his or her debts. It also does not prejudice creditors' rights as the debtor will end up 'repurchasing' the family home on more favorable repayment terms.

In exceptional cases, the Court may discharge the debtor from all payments. From time to time, the Court may re-evaluate the debtor's assets and income and amend its decision.

The Court will absolve the debtor from all remaining debts, if he or she fulfills his or her obligations under the ratified plan of reorganisation or the court decision establishing a four-year payment schedule and the twenty-year payment schedule for preservation of the family home. This release from liability applies in respect of all creditors who fail to renounce their claims. However, if the debtor fails to make the payments prescribed by the plan for three consecutive months, creditors will again be able to enforce their original claims. The Court's decision to release the debtor from all liabilities is subject to appeal.

The statute contains no provisions for the imposition of a stay on creditors' enforcement measures absent a decision of the Court of Appeal, if the Magistrates' court rejects the debtor's petition. This will leave the debtor exposed to recovery proceedings by individual creditors. Another issue that has raised concerns and may be the subject of legislative amendment is the stay on creditor enforcement actions against the debtor's family home.

The purpose of insolvency is the collective satisfaction of creditors through the liquidation of the debtor's estate or the continuation of the debtor's business. The statute seeks to mitigate the adverse consequences of insolvency by achieving the social and economic reincorporation of the debtor, through writing-off debts that the debtor would otherwise be unable to pay.

The statute provides a means for resolving the problems resulting from the expansion of consumer credit in Greece, made more acute by the economic crisis. That has in turn resulted from many Greek individuals taking out loans and other types of credit bearing high interest rates. The law does not endeavour to broaden the scope of insolvency in this manner. It seeks to apply various insolvency-related techniques to redress the usual balance of power between consumers and banks, taking account of the fact that both consumers and banks are currently suffering from the effects of the global economic crisis. Although the legislature may develop a more comprehensive insolvency regime for non-merchants, its focus at present would appear to be on assisting individuals within the context of the current economic crisis, while minimally benefitting banking institutions. 🇬🇷



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