

*Law 4549/2018 (Government Gazette, Issue A/105-14.6.2018) on “Provisions for the completion of the Agreement on Fiscal Targets and Structural Reforms-Midterm Framework of Fiscal Strategy of 2019-2022”, enacted a few days ago by the Greek Parliament includes amendments to the Greek Bankruptcy Code, the Law on the Out-of-Court Work Out Mechanism (OCW) and the Law on Non-Performing Loan Management Companies.*

In particular, the most important amendments included in the new law could be summarized as follows:

## ***A. Amendments to the Greek Bankruptcy Code***

***Enhancing the discharge of the bankrupt individual debtors when no bad faith is attributable to him***

- The Greek Bankruptcy Code has moved towards the direction of providing a second chance and removing the stain on bankruptcy from honest debtors, especially following its amendment by L. 4446/2017. In alignment with this, a second chance is now provided for those individual debtors who due to lack of adequate bankruptcy estate to cover process costs cannot be declared bankrupt and therefore remain in a continuous state of limbo along with those third parties that retain business relationships with them.
- The purpose of the suggested provision is to clear the Greek Economy from “Zombies” and allow the re-activation of honest businesspersons who did not manage to escape the “death” of their businesses.
- In order to discharge the bankrupt debtor, the only requirement is his declaration as excusable. The relevant petition may be filed by the debtor following the lapse of 3 years following the entry of his name or trade name to the Greek Companies Registry and the respective Bankruptcy Registries. This period of time is considered as sufficient in order to mitigate attempts to circumvent the relevant framework for debtor discharge. As an additional safeguard, creditors are given the option to submit before the competent Court their views regarding the petition of the debtor to be declared excusable.

## ***B. Amendments to the Out-of-Court Work Out Mechanism (OCW)***

***Settlement of debts that became generated or certified until 31.12.2017, while including a differentiation regarding the treatment of debts owed to Social Security Bodies (where crucial is the time that the***

- The suggested legislative provisions aim to improve the operational framework of the OCW, but without causing any structural changes.
- Because businesses already within the OCW are faced with significant debt, generated or certified within FY 2017, the settlement of debts generated or certified until 31.12.2017 is now provided.
- Furthermore, a differentiation regarding the treatment of debts towards Social Security Funds, as compared with the treatment of debts vis-à-vis the State and third parties, is also introduced. In particular, whereas for debts towards the State or third parties the crucial time is that of the debt certification, for debts vis-à-vis SCF the crucial time is that when they were generated.
- The purpose of the above provisions is for the applicant not to lose the right of settling debts that were generated during FY 2017 but ultimately became certified during FY 2018. It is notable that due to the statutory deadlines on tax return

flings for FY 2017 an equivalent provision for debts vis-à-vis the State for FY 2017, which would be certified within 2018, was considered as “morally hazardous”.

***Notification of SSPD for the negotiation outcome***

- The notification of the Special Secretariat for Private Debt (SSPD) with respect to the negotiation outcome, within one month following such outcome where such negotiation has exceeded the three-month statutory duration is now provided. The purpose of this, is to counter the phenomenon noted during bilateral negotiations (i.e. with a creditor accounting for more than 85% of the claims), where SSPD did not have knowledge as to the outcome of the process.

***Participation of minor creditors to the process and any restructuring concluded***

- The procedural vacuum noted, regarding the treatment of the minor creditors with equal claims, where such claims when added together are above the 15% or 20 mil Euro out of total claims threshold, is now regulated. In particular, such minor creditors with equal claims shall participate in the process and be bound by the concluded restructuring agreement.

***Special framework for debts of general partners***

- General partners of partnerships (General Partnerships and Limited Partnerships) may file separately for the work-out of his personal qualifying debts. In the frame of such a separate filing, the creditors must have a detailed view of the applicants-general partner's financial situation and therefore the latter must submit with their petition all requisite documentation.
- The termination of any independent personal business activity pursued by the general partner is not an exclusion ground from debt work-out as far as his partnership entity has not been dissolved. On the other hand, in case where such partnership has been dissolved, the general partner may work-out his debts, including those deriving from his capacity as general partner of the partnership, as far as he continues to maintain an independent personal business activity.
- With respect to qualification grounds (i.e. de minimis one FY with positive results out of the last three FY's ), it must be determined at entity level not at general partner level given that the latter does not keep accounting books in his own name.

***Issues regarding the correct determination of the debts are resolved, along with legislative authorization to issue secondary legislation to address practical in-process issues***

- The issue that has arisen with respect to disputes between debtors and creditors, regarding the exact determination of the due debts, due to charges of interest and expenses factored in the relevant amounts, is regulated through a provision by operation of which the applicant debtor must set a reference date in his application, affixed next to the determination of the owed amounts.
- The authorizing provision for the issuance of secondary legislation of para. 9 of art.5 of L. 4469/2017 is amended in order for the Joint Ministerial Decision to be issued by such authorization to include specific provisions for piecemeal submission of required documentation, up to the stage of negotiation conclusion.
- Furthermore, during the phase of review of the submitted documents by the process coordinator, to the extent that a non-justifiable deviation is found regarding the debt amounts (i.e. more than 1/5 of the debt to be worked-out/settled), a second round for the collection of additional documentation by the coordinator is provided, in order to achieve the requisite debt determination before the negotiation process kick-off.
- An authorizing provision for the issuance of secondary legislation (Joint Ministerial Decision) is being introduced, which shall regulate procedural issues (e.g. providing, amending, deferring of deadlines, filing deletion and resubmission for rectification of errors or omissions, process for pending application waiver, etc.).

***Extension of the ipso jure suspension from 70 to 90 days***

- Extension of the ipso jure suspension of enforcement measures or any other injunctive/provisional relief measures against the debtor from 70 to 90 days.

***Special regime  
for the ipso jure  
suspension of  
administrative  
measures***

- By way of an explicit proviso, the ipso jure suspension of enforcement measures also extends to capture the administrative measures imposed either automatically or by way of an Administrative Act/Decision, for the undue payment of debts under work-out/settlement, where they have as effect the suspension of business activity.
- The revocation of the suspension of administrative measures can take place by way of an Administrative Act, without a Court decision being required, when it is considered probable that the retention of the suspension in effect may cause irreparable harm to the public interest.

***Resolving issues  
regarding Greek  
State and SCF's  
participation***

- With respect to the determination of the debts vis-à-vis the State, the net present value (NPV) will be taken into consideration when applying the mechanism mandatory rules, i.e. without applying the principles of: (i) no creditor worse off (NCWO), and (ii) recovery of an amount at least equal to the portion of proceeds in execution of a liquidation scenario (i.e. creditors waterfall working assumption)
- Mandatory participation of the Greek State in the negotiations for debts of materiality up to 20k Euros, where such debts are owed to the State or the Social Security Funds.
- Issuance of an Act by the Competent Tax Authority, notified to third parties, by virtue of which the effect of public garnishment orders (i.e. confiscations imposed by the Greek State to the hands of third parties) are limited in the event of a work-out settlement agreement conclusion. By operation of this Act, future claims are released but the garnishment order imposed is not waived.
- Full waiver of a garnishment order may be achieved only where more than 75% of the total amount payable to the Greek State is paid, in implementation of the work-out agreement

***Extension of the  
OCW utilization  
to initially non-  
eligible  
categories of  
debtors***

- Extension of the utilization of the OCW electronic platform to debtors that do not fall within the ambit of the ordinary process (e.g. farmers, free-lancers, etc.) for debt settlement with the State or the Social Security Funds or Financing Entities.
- Provision for the waiver of Bank and Tax secrecy protection to the above cases.

***Transitional and  
Intertemporal  
provisions***

- A general rule of transition is set, by virtue of which the new provisions shall apply only to those filings that follow entry into effect of L. 4549/2018 .
- Exceptions from the above general rule are provided for the following instances of pending cases or applications: (i) the notification of the SSPD for the process outcome, (ii) the rules on the participation of small creditors with equal claims, (iii) the regulation by way of a Joint Ministerial Decision of procedural issues, (iv) the extension of the new suspension regime to pending cases, (v) the application of the Net Present Value regarding the determination of payments to the Greek State, (vi) the mandatory participation of the Greek State and the Social Security Funds in pending cases with materiality below the 20k Euros threshold, where there is no private creditor participation.
- The provision on the limitation of the effects from State motioned garnishment orders is extended to capture already signed work-out agreements.
- Resubmission of petitions for which the process has been completed without results, when they include eligible debts of FY 2017 (i.e. until 31.12.2017). With respect to pending applications, the possibility to delete and resubmit in order to include eligible debts of FY 2017 is also provided.

- General Partners of partnerships that filed a petition prior entry into effect of the new provisions irrespective of its outcome, may file a separate petition for the settlement of their own debts.

### ***C. Non-Performing Loan (NPL) Management Companies***

- It is explicitly stipulated, in order to waive any interpretative issues, that NPL Management Companies are Financing Institutions and are supervised by the Bank of Greece in its capacity as regulator.
- The sale of a loan without prior notification of the debtor, which up to now applied only to non-cooperative debtors, is extended to non-performing corporate/business loans. In particular, the obligation of credit or financing institutions to inform within 12 months the debtors and the guarantors of transferred loans is waived. The only exception to this rule is provided for loans extended to individuals falling within the definition of consumer (as per L. 2251/1994).
- The announcement entry to the public record book of article 3 of L. 2844/2000 shall be notified to the debtors and their guarantors with any mean deemed suitable including e-mails and SMS texts.

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*This information is intended only as a general update for interested persons and should not be used as a basis for decision making. For further details please contact PwC:*

268, Kifissias Avenue

15232 Halandri

tel. +30 210 6874400



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