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On 16th September 2007, the new Bankruptcy Code (hereinafter BC) entered into force, by virtue of art. 99 et seq. (sixth chapter) of which a new pre-bankruptcy process was introduced into Greek law, namely "*the reconciliation process*".

On 31st August 2011, a new law has been voted by the Greek Parliament, which introduces amendments to the sixth chapter of the BC on reconciliation process, the latter being renamed "*pre-bankruptcy recovery process*".

The main purpose of the reform, which has been considered as necessary in order to address the failures of the current provisions, is the facilitation of the rescue process of enterprises facing financial difficulties through the introduction of the following key amendments:

1. At the stage from filling the application to enter into the recovery process until the court hearing

❖ The entry into the pre-bankruptcy recovery process is also allowed to debtors, who are already at a suspension of payments (i.e. bankrupt) status;

❖ The application to enter into the recovery process has to include a report by an expert (ie. financial institution, auditor or audit firm), whereas a duty amounting to €4.000 (for SAs the relevant duty is € 7.000) is also payable;

❖ The court hearing of the application has to be scheduled within two months from the date of its filing;

❖ The suspension of enforcement measures against the debtor's assets automatically results to a disposal prohibition of its immovable property and equipment;

❖ It is statutorily acknowledged that the suspension of enforcement measures may also cover guarantors or other persons liable for the enterprise's debts, on the condition however that a significant business or social reason exists;

❖ The right of appeal against the court decision, which rejects the application, is introduced.

2. Following the "opening" of the recovery process until judicial ratification of the recovery agreement

❖ In order to avoid publicity of the debtor's financial difficulties, the possibility to directly file before the competent court an application for ratification of a recovery agreement is being introduced, as far as the debtor has reached an out of court agreement with the creditors;

❖ The appointment of a mediator (*μεσολαβητής*) is mandatory only if requested by the debtor.

❖ The possibility to appoint a special proxy (*ειδικός εντολοδόχος*) is being introduced, who is responsible for the preservation of the debtor's domestic or foreign assets.

❖ In order to resolve the practical difficulties arising mainly in cases of numerous creditors, the Law provides for the convening of a creditors' meeting following the debtor's request; statutory provisions are being introduced in respect of participation to the meeting and adoption of decisions;

❖ In order for a decision of the creditors' meeting to be valid, a quorum of creditors representing 50% of the total creditors' claims is required; for the lawful acceptance of the recovery agreement, a majority of creditors representing 60% of the creditors' claims present at the meeting is required; this 60% shall include 40% of the claims of creditors present at the meeting, which are secured by a security over real property or chattel, or by pre-notation of mortgage, or which bear a special privilege;

❖ If the conclusion of a recovery agreement falls within the competence of the Board of Directors or the administrators of the debtor, the agreement may be concluded without the consensus of the majority of the debtor's shareholders or partners; when consensus of the shareholders or partners is

required in order to implement the recovery measures provided by the agreement (such as a capital increase), their will may be substituted by the competent court, if they refuse, in bad faith, to cooperate;

❖ The recovery agreement is mandatorily accompanied by a business plan and an expert's report.

❖ The bankruptcy court is entitled to demand clarifications or amendments to the agreement.

3. Following ratification of the agreement

❖ A major novelty introduced by the Law, for the purpose of addressing the collective action problem, is that the recovery agreement is binding upon all creditors, even those who voted against it;

❖ The penal responsibility arising from issuance of bounced checks and from non-due payment of debts towards the State and social security funds are waived;

❖ No time limit is set by the statutory provisions as to the term of the recovery agreement;

❖ Non performance of the agreement by the debtor does not automatically cause its termination, unless otherwise agreed by the parties;

❖ The Law provides as a recovery measure, among others, the transfer of the enterprise either to its creditors, or through contribution of their claims against the debtor, or to third parties, whereas the transfer of pending contracts and administrative licenses is facilitated, as well as tax exemptions are being offered. The transfer consideration is used for the satisfaction of the creditors.

❖ The write off of a claim by a creditor on the basis of a recovery agreement ratified by the court, is tax deductible.

Finally, the following is worthwhile to be mentioned:

❖ Facilities secured by a financial collateral arrangement pursuant to article 2 of law 3301/2004 are affected by neither a suspension of enforcement measures, nor the terms of the recovery agreement, unless the collateral taker agrees otherwise;

❖ The procedure of special liquidation (*ειδική εκκαθάριση*) is being once more introduced as an ultimate solution, only if it is not possible to achieve a recovery agreement; any application for initiation of the special liquidation procedure is being postponed as long as the recovery procedure is pending;

❖ as to the entry into force of the new provisions, those who have already filed an application to enter into the recovery process may subject it to the new provisions following a respective request to the court.

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