

## CLIENT ALERT

### THE NEW LAW ON NON-PERFORMING LOANS

This Alert provides an analysis of the main provisions of the new law dealing with Non-Performing Loans (NPLs), certain to be of significant importance and to have an impact on the Greek market. Over the last months, discussions have taken place between both international investors and Greek credit institutions on issues relating to sale and purchase of NPLs. The law aims to create a regulatory framework which will provide certainty and simplify existing judicial procedures that have impeded restructuring transactions and the recovery process. It is also intended to have considerable social impact, by providing relief to small businesses and professionals with overdue liabilities to banks, the Greek State and social security funds, and as well as to regulate restructuring procedures for over-indebted viable businesses.

NOVEMBER 2014

#### MAIN PROVISIONS:

- INCENTIVES TO BOTH DEBTORS AND BANKING INSTITUTIONS TO PARTICIPATE IN A DEBT SETTLEMENT AND WRITE-OFF PROGRAM.
- THE REDUCTION AND SETTLEMENT OF THE DEBTS OF SMALL BUSINESSES AND PROFESSIONALS TO THE GREEK STATE AND SOCIAL SECURITY FUNDS, WHICH HAVE SUCCESSFULLY COMPLETED THE SETTLEMENT AND WRITE-OFF PROGRAM.
- AN EXTRAORDINARY PROCEDURE FOR THE SETTLEMENT OF THE DEBTS OF BUSINESSES.
- AN EXTRAORDINARY PROCEDURE FOR THE APPOINTMENT OF A SPECIAL ADMINISTRATOR FOR DEBTORS.

#### DEBT SETTLEMENT AND WRITE-OFF PROGRAM

##### What Entities are Eligible to Apply?

Small businesses or professionals which:

- › Have a turnover of up to €2.5m as at 31st December 2013.
- › Have not applied, or have withdrawn an application, for protection under Law 3869/2010 dealing with over indebted households and businesses.
- › Have not suspended their operations.

- › Have not applied, or have withdrawn an application, for protection under the Greek Bankruptcy Code.
- › Have had no convictions for tax evasion, smuggling or fraud committed against the Greek State or any social security fund returned against the professional or officers and representatives of the small business.
- › Have settled any debts to the tax authorities and/or social security funds in accordance with either the provisions of Law 4305/2014 (providing for settlement in up to 100 monthly instalments) or any applicable legislation, and continue to abide by the terms of such settlement.
- › Apply for qualification by no later than 31<sup>st</sup> March 2016.

#### **What Debts Qualify?**

The following criteria must be met for debts to qualify for a capital and interest write-off:

- › The debts arise from business loans which are non-performing as at 30<sup>th</sup> June 2014.
- › The debts are owed by entities which have not obtained tax and social security clearance certificates due to unsettled debts or which have obtained clearance certificates under previous settlement arrangements.
- › The debts arise from bank loans which in total do not exceed €500k from each of the debtor's creditor banks.
- › The debts are equal to at least 50% of the total amounts owing to each bank.
- › If this threshold is not met, the remaining debts following the write-off must not exceed 75% of the net asset value of the debtor and any co-debtors.

#### **What is the Procedure?**

- › The debtor must submit an application and an asset and liability statement to the bank so that its net asset value can be determined.
- › The bank provides the settlement and/or write-off based on criteria by reference to which the debtor's capacity to pay its debts is evaluated.
- › The bank retains the right to provide settlement and/or write-off of debts on terms different than the ones set out in the debtors' application.

#### **Further Benefits Attached to the Debt Settlement and Write-Off Program**

- › The debtor is entitled to an additional write off of a 20% over incremental, interest and penalty charges for overdue payments to the tax authorities and/or social security funds.
- › If the debtor fails to comply with the terms of the settlement of any of its debts for a period exceeding 3 months, all debts which have either been settled or written off become immediately due and payable.

### **EXTRAORDINARY PROCEDURE FOR THE SETTLEMENT OF DEBTS**

#### **What Entities are Eligible to Apply?**

Any person or legal entity which:

- › Is commercially active and may become insolvent.
- › Whose main business interests are based in Greece.

- › Has settled its debts to the tax authorities and/or social security funds, if any, in accordance with either the provisions of Law 4305/2014 (providing for settlement in up to 100 monthly instalments) or any applicable legislation and continues to abide by the terms of such settlement.

### **What Debts Qualify?**

- › There are no limitation criteria as to the amount or nature of debts which can be subject to this procedure.

### **What is the Procedure?**

- › Qualified entities are entitled to apply up to the 31st March 2016 for the settlement of their debts.
- › This is subject to the consent of creditors holding at least 50.1% of the qualified entity's total debts (including at least 50.1% of any secured creditors) of which at least two are creditors banking institutions that represent a minimum of 20% of the qualified entity's total debts.
- › Consent is given by way of a settlement agreement.
- › The debtor's application for settlement is submitted together with the settlement agreement as well as an assessment report on the viability of the debtor prepared by the contracting parties.
- › The application is heard ex parte before the Court of First Instance located in the area in which the debtor is registered.
- › In the event that the Court accepts the application, the applicant's debts are settled, provided that the contracting creditors represent the required type and percentage of the debts outlined above and the debtor has settled its debts to the tax authorities and/or social security funds.
- › The Court's decision is binding for all the debtor's creditors.
- › If provided by the settlement agreement, all individual and collective prosecutions initiated by the creditors against the debtor and any co-debtors, may be suspended for a period of up to 3 months following the issuance of the Court's decision.
- › For the same time period, the statute of limitations applicable to the creditors' claims against the debtor's guarantors and any co-debtors are suspended in relation to any procedural actions.
- › All collective enforcement measures, including bankruptcy, against the debtor are suspended for a period of 12 months following the issuance of the Court's decision.
- › Amounts overdue to any employees as defined pursuant to Article 154, para (c) of the Greek Bankruptcy Code, must be paid by the debtor in 12 equal, interest free, monthly instalments.

### **Further Benefits Attached to the Extraordinary Procedure for the Settlement of Debts**

- › Any debtor which has successfully completed the Extraordinary Procedure for the Settlement of its Debts is entitled to an additional write-off of a 20% over incremental, interest and penalty charges for overdue payments to the tax authorities and/or social security funds. This is on condition it has not been convicted of tax

evasion, smuggling or fraud committed against the Greek State or any social security fund.

- › If the debtor fails to comply with the terms of the settlement of any of its debts for a period exceeding 3 months, all debts which have been settled become immediately due and payable.

## **EXTRAORDINARY PROCEDURE OF SPECIAL ADMINISTRATION OF THE DEBTOR**

### **What Entities are Eligible to Apply?**

- › Any person or legal entity which is commercially active and may become insolvent, whose registered office is in Greece and which is permanently unable to meet its overdue financial obligations.

### **What Debts Qualify?**

- › There are no limitation criteria as to the amount or nature of debts which can be subject to this procedure.

### **What is the Procedure?**

- › The application is filed by the debtor's creditor(s), which must include at least one banking institution and possess debts representing a minimum of 40% of the debtor's total indebtedness.
- › The application is heard ex parte before the Court of First Instance located in the area in which the debtor is registered.
- › In issuing its decision to accept the application, the Court appoints the Special Administrator put forward in the application, or where more than one Special Administrator has been put forward, the Court will use its discretion in choosing which to appoint.
- › The Court's decision is issued within one month of the hearing.
- › As soon as possible following its appointment, the Special Administrator must proceed to a public tender for the auction of the defaulting party's total assets or any part, branch or individual assets (which are not branches) of the business.
- › If the Special Administrator disposes of at least 90% of the total assets of the defaulting entity (calculated at book value), it can apply to the Court for the extension of its appointment for the sole purpose of distributing the liquidation proceeds to all creditors, in the event that the disposal proceeds are sufficient for such distribution.
- › For these purposes, all creditors include the creditors which have filed the application and any other creditors which have come forward and registered their claims at auction.
- › Where the Special Administrator is unable to dispose of the 90% minimum of the defaulting party's total assets within 12 months following the issuance of the Court decision on the application, the Special Administrator is obliged to file a bankruptcy petition.