



## Greek Law 4738/2020: Insolvency Practitioners

Pursuant to Law 4738/2020 (Greek Government Gazette A' 207/27.10.2020) entitled "*Debt settlement and second-chance arrangement and other provisions*" (hereinafter "the Law"), the provisions on insolvency proceedings are holistically regulated. The Law also includes the provisions governing the profession of Insolvency Practitioners, in harmonization with the provisions of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 "*on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)*".

### **Necessity and Purpose of the Regulation**

The regulatory framework for Insolvency Practitioners was introduced to the Greek legislation in December 2016 with p.d. 133/2016, in implementation of the relevant authorizing

provision under Law 4336/2015, widely known as the "Third Memorandum", which defined the qualifications, responsibilities and the main rights and obligations of the Insolvency Practitioners.

However, by implementing this regulation and further to a relevant evaluation, a necessity to review the current legal framework arose, in order to cover some key issues, for the benefit of not only the Insolvency Practitioners, but also the creditors and the debtors, such as: minimum required qualifications, supervision and control of Insolvency Practitioners, remuneration, liability and insurance, access for legal entities to the profession of Insolvency Practitioners, establishment of a Code of Conduct, as well as establishment of a deterrent mechanism of sanctions. Such issues are about to be resolved by the new regulatory framework.

### **Provisions of the New Law**

Specifically, the provisions of articles 227 - 263 and 265 of the Law provide for the following amendments to the regulatory framework for Insolvency Practitioners:

- ▶ The meaning of a Certified Person is introduced for the first time. Such person is always a natural person, holder of a Certificate for the exercise of the profession of an Insolvency Practitioner, in contrast to the meaning of the Insolvency Practitioner, who can be a natural person, provided that he/she holds a valid certification, individually or as a joint ventures of natural persons, as well as legal entities and in particular a law, audit or consulting firm, if they employ at least one Certified Person with any employment type.
- ▶ It is stipulated that the Insolvency Administration Committee now operates in the Ministry of Finance under the supervision of the Special Secretariat for Private Debt's Management, in contrast to the previous applicable legal framework, when it operated under the Ministry of Justice.
- ▶ It is clarified that the exercise of the duties of Insolvency Practitioners, even in the context of employment in an audit or consulting firm, is not incompatible with the legal profession within the meaning of the provisions of Lawyer's Code of Conduct (L. 4194/2013) and that Law Firms may employ non-lawyers as Certified Persons.
- ▶ An important innovation is the provision that the Insolvency Practitioner is not liable as a representative of the debtor for debts to the State, Social Security Institutions or employees.
- ▶ The framework for conducting the Insolvency Practitioners' certification exams is defined, where the insolvency management best practices are added to the examined objects for the relevant certification, while at the same time a fee of 100 € paid for the participation in the exams is provided, which can be readjusted by a Joint Ministerial Decision of the Ministers of Finance and Justice, following a suggestion by the Special Secretary for Private Debt Management.
- ▶ A Register of Certified Persons is established, which is registered in the Electronic Solvency Register.
- ▶ The Insolvency Practitioner's remuneration can be defined as a fixed amount paid gradually during the procedure or at the end of it, while at the same time the criteria that affect its amount are defined. Such criteria might be the financial value and type of case, the diligence, ability and experience of the Practitioner, as well as the type and quality of the scientific work provided.
- ▶ Issues relating to the continuous education of Certified Persons are regulated and it is provided that the renewal of the certification requires the participation in continuous education programs.
- ▶ The distinction of Insolvency Practitioners is maintained in two levels, i.e. Tier A and Tier B, depending on the qualifications of each Practitioner and the type of cases he/she can undertake, with adjustments in terms of minor scale procedures, and also the establishment of Insolvency Practitioners - legal entities.
- ▶ For the direct registration of an Insolvency Practitioner in Tier A, through which he/she can be appointed in all the procedures provided by Law, the criterion of proven employment by any employment relationship is introduced, either through a contract of employment or through independent services, or a work contract in at least three insolvency cases, and in the case of a legal entity, the employment of at least one person who meets the conditions for inclusion in Tier A for natural persons.
- ▶ The submission of a professional liability insurance contract covering the civil liability from the exercise of duties as an Insolvency Practitioner, including the commission of a disciplinary misconduct, is provided, as a condition of appointment and not as a reason for revoking the Insolvency Practitioner's license. It is clarified that in the case of an Insolvency Practitioner who is a legal entity, a contract for the legal entity is presented, while in the case of a natural person, which is employed by a legal

entity, its professional liability insurance is covered by the professional liability insurance of the legal entity, where the relevant certificate of the legal entity should state that the Insolvency Practitioner is also covered as a natural person.

- ▶ It is clarified in which specific cases the renewal of the Insolvency Practitioner license is not justified.
- ▶ The introduction of a Code of Conduct for Insolvency Practitioners is provided by authorization of this Law, in accordance with the principles of the Directive (EU) 2019/1023.
- ▶ It is stated that the Periodic Information Report is registered in the Electronic Solvency Register.
- ▶ The non-acceptance of an appointment without a grave reason or the resignation of the Insolvency Practitioner without a grave reason is added as a disciplinary offense.
- ▶ The reasons justifying the penalty of the temporary revocation of the Insolvency Practitioner's license are specified and the conditions for the impunity of the misconduct and the final revocation of the Insolvency Practitioner's license are provided.
- ▶ In the case of Insolvency Practitioners - legal entities, a disciplinary penalty may be imposed both on the Insolvency Practitioner and on the employed Certified Person. The liability of the legal entity and the employed Certified Person are inspected independently.
- ▶ The required legislative authorizations are defined for the issuance of regulatory administrative acts, which relate to: a) issues of the Insolvency Administration Committee and the Disciplinary Boards, b) the compensation of the members of the Committee and the Disciplinary Boards, c) the annual subscription of the Insolvency Practitioners and the renewal fee of the issued certification, d) the transfer of the registrations from the Register of Insolvency Practitioners kept by the Ministry of Justice, according to p.d. 133/2016 (A 242) to the Register of Certified Persons and the Register of Insolvency Practitioners respectively, e) conducting certification exams, f) the terms and conditions of training, g) the insurance of professional liability, h) the introduction of a Code of Conduct, i) the minimum remuneration of Insolvency Practitioners.
- ▶ The ability to appoint a lawyer, an accountant, a Tier A tax professional or a Notary Public is

provided in minor scale bankruptcies, if the number of Insolvency Practitioners is insufficient. Moreover, the assignment of duties to Insolvency Practitioners in pending proceedings, before the entry into force of this Law, is not affected.

- ▶ Legal entities may be registered in the Register of Insolvency Practitioners, at the time of entry into force of this Law, provided that they employ at least one natural person holding an Insolvency Practitioner license, registered in the Register of P.D. 133/2016 (A 242), subject to an application to the Insolvency Administration Committee. The form of the application and the required supporting documents will be determined subject to a decision of the Committee.
- ▶ Finally, the obligation to conduct exams for obtaining an Insolvency Practitioner license in 2020 is lifted.

### **Objectives**

The broader objective of the legislative intervention regarding the profession of Insolvency Practitioner, which is largely achieved with the new framework, is the establishment of an integrated and effective regulatory framework, which will effectively deal with the problems of the current regime and contribute to the rapid and efficient completion of Insolvency Proceedings, taking into account the key role of the Insolvency Practitioners.

Thus, the new regulations aim to:

- ▶ attract as many qualified professionals, natural persons or legal entities, as possible who fulfill the required qualifications;
- ▶ ensure that Insolvency Practitioners are properly trained, appointed in a transparent manner and perform their duties with impartiality, honesty and professionalism, in order to ensure the principles underlying the Insolvency Law and are repeated in Directive (EU) 2019/1023;
- ▶ establish supervisory mechanisms while performing the Insolvency Practitioners' duties, taking into account the necessity to ensure the effectiveness of procedures;
- ▶ reduce the phenomenon of unjustified prosecutions against Insolvency Practitioners, which hindered the completion of insolvency proceedings.

The unfortunate event of the pandemic we are currently facing and the unexpected increase in the risk of bankruptcies in the near future render the relevant regulations even more essential, but also increase the added value of any amendment and improvement of the existing framework.

*\*The present document constitutes one out of three alerts, regarding the context of Law 4738/2020 titled “Debt settlement and second-chance arrangement and other provisions». Please also see and the other related alerts titled “Bankruptcy” and “Rehabilitation of legal entities” accordingly.*

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