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COMMERCIAL LITIGATION



LEGAL BULLETINS - ISSUE 2026



PSARAKIS - KEFALAS LAW FIRM LEGAL BULLETINS – ISSUE 2026

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RECALL OF MANAGER OF JOINT-STOCK COMPANY

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Private companies, such as general partnerships, are legal entities through which small and medium-sized enterprises conduct their business activities, with a family or, in any case, closed structure in terms of the persons participating in the corporate structure. Due to the close and intimate relationships that develop among the members of a general partnership, the management and representation of the company belongs, in principle, unless otherwise provided for in the company's articles of association, to all partners, who may act individually without the cooperation of the others. However, the members of the company may stipulate in its articles of association that one or more persons shall be the managers and representatives of the company. The above provision of the articles of association is clearly not immutable, as the members of the company may revoke the management and representation powers granted to specific persons, especially if the latter commit management errors. Below, we will attempt to briefly outline the conditions that must be met for the revocation of a general partner to be lawful, as well as the legal consequences of such revocation.

Legislative provisions - Management authority in general partnerships and its termination:

Articles 254(1) and (2) of Law 4072/2012, which includes provisions for general partnerships, stipulate that: "*All partners have the right and obligation to manage the company, unless otherwise specified in the partnership agreement {...} Where management is exercised by all or most partners and unless otherwise provided in the partnership agreement, each managing partner may act alone.*" At the same time, Article 257(1) of the same law stipulates that "*Each partner has the power to represent the company, unless otherwise specified in the partnership agreement.*"

The above provisions reflect the basic provision of the legislator for general partnerships and apply when the articles of association do not contain different provisions (in this case, as is typically stated, the rule of lawful individual management is reflected).. **In practice, however, the members of the company wish the latter to be managed and represented to third parties by a specific person or persons, either because of their particular abilities and, therefore, because the other members trust them more, or because of their greater contribution to the company's activities,** etc. More rare are cases where the partners choose collective management of the company (pursuant to Article 748(1) of the Civil Code, 249

paragraph 2 of Law 4072/2012), as in these cases the consent of all partners is required cumulatively for the performance of management acts (payments to employees and suppliers, withdrawals from banking institutions, signing of agreements, purchase of supplies, etc.), thus hindering the speed of its transactions and possibly increasing friction between the partners. In such cases, however, where a provision other than the above rule of individual action by all partners is chosen, this is referred to as "statutory management", as is typically reflected.

The termination of management authority (whether it concerns internal company matters or its representation to third parties in the market) occurs with the loss of partner status due to:

- Dissolution and bankruptcy of the company.
- Death of the manager.
- The administrator being placed under judicial assistance.
- Voluntary withdrawal or exclusion.
- Recall of administrator and representative pursuant to Articles 752 and 757 of the Civil Code and Article 249(2) of Law 4072/2012. The latter may only take place in cases where the members have chosen in their articles of association to assign the management to one or more persons or to all members collectively, and not in cases where Article 752 applies.

the above-mentioned legal individual management (i.e. when each member can act individually without the consent of the others).

Revocation of Administrator - Conditions for revocation:

According to the specific provisions of Article 752 of the Civil Code (the conditions of which also apply to the revocation of representative authority): "The management entrusted by the partnership agreement to one or more of the partners may be revoked only for good cause {...} Good cause shall be deemed to include, in particular, serious breach of duties or inability to manage properly. The revocation shall be effected by unanimous decision of all the other partners, unless otherwise agreed."

a) Decision of the other partners: A basic prerequisite for the revocation of the manager is the unanimous decision of all the other partners that they no longer wish a specific person or persons to manage the company. **It should be noted that the articles of association may provide that unanimity is not required, but that a majority is sufficient** (Article 752(3) of the Civil Code in conjunction with Article 253(2) of Law 4072/2012). **It is also important to note that the manager being recalled is deprived of the right to vote on his or her recall, for obvious reasons of conflict of interest** (see also MPPrThessal 7631/2013, TPN NOMOS, which ruled that a statutory clause providing that the recalled person must consent to his recall is invalid, as well as Article 98 of the Civil Code). The revocation of an administrator is also possible in a two-member general partnership, as the unilateral declaration of the sole partner entitled to vote is equivalent to a multilateral decision taken by more than one partner (joint interpretation of Articles 253 and 267 of Law 4072/2012).

Therefore, in order for the decision to take effect and for the manager's powers to cease, the following is required:

- The decision in question must be taken, not necessarily in writing, unless the company's articles of association provide otherwise.
- It must be communicated by any means to the administrator, who must be informed of the decision, and the decision must be recorded in the minutes of the meeting.

called (EfPeir 577/2014, TPN NOMOS).

- **It must be declared to the General Commercial Registry (GEMI) in order to be valid against bona fide third parties, i.e. those who are unaware of the revocation decision from another source.**

b) Important Reason: A second and fundamental prerequisite for revocation is the existence of an important reason. Such a reason exists when the continued management by the person appointed by the parties becomes particularly detrimental to the interests of the company and, indirectly, to the other partners. The concept of good cause is assessed on a case-by-case basis, taking into account, for example: special agreements between the partners, the object of the activity, the size and duration of the business, the persons and particularities of the partners, the structure of the company, its financial performance, etc. Good cause is not necessarily a culpable breach of management, but also an unculpable illness, e.g. of the manager, which prevents him from exercising regular management, with the result that the financial interests of the company are affected. It should be noted that an agreement between the partners that excludes the dismissal of a manager for good cause is invalid (Article 752(1)(b) of the Civil Code). However, agreements that limit the important reasons and list them exhaustively or indicatively are permitted.

The following have thus been deemed to be important reasons for revoking management:

- **Long-term illness and long-term absence.**
- **Persistent non-compliance with standards of diligent management (failure to keep proper accounting records, failure to issue documents, etc.).**
- **Unwillingness and refusal to perform necessary management acts.**
- **Unjustified opposition to necessary management actions or unjustified non-consent to them (e.g. unjustified opposition to the settlement of the company's debts to the State).**
- **Misappropriation of company funds (embezzlement of available company funds).**
- **Engaging in activities that compete with the company.**

for the purpose of serving personal interests.

Consequences of Revocation:

In order for the revocation decision to take effect, as mentioned above, the decision must be brought to the attention of the revoked partner and published in the General Commercial Registry (GEMI) with regard to third parties. The existence of a valid reason is a prerequisite for the validity of the revocation, and the latter will be invalid (180 AK) if the revocation decision does not invoke good cause or if the facts invoked are untrue or cannot be classified as good cause. Therefore, the revoked administrator or any other person with a legal interest may:

a) request, by means of a declaratory action (Article 70 of the Code of Civil Procedure), a determination of whether or not there are important reasons in the context of

(MonProtThessal 37407/2006, EpiskED, 2006, 244) and for as long as the latter lasts.

b) to request the adoption of precautionary measures in order to temporarily regulate the exercise of administrative power in the form of statutory management.

However, with the lawful revocation of the statutory administrator (or administrators), the lawful management of the company is revived, i.e. the above rule of individual management. This will result in the revoked administrator, if he continues to maintain his corporate status, resuming his duties as administrator. The others, however, will retain the right to object under Article 254(2)(b) of Law 4072/2012 (according to the latter: the person performing the administrative act must not perform it if one of the other administrators objects before it is performed – see also AP 1333/2017, DEE 2017, 1459).

FINANCING OF S.A. THROUGH HYBRID SECURITIES (Part I)

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The modern financing of public limited companies is shaped by market developments and technological advances, leading, among other things, to the development of hybrid financing instruments. Traditional forms of capital support are being reshaped to offer greater flexibility and adaptability. The aim is to create financing tools that meet both the needs of issuing companies and the requirements of the investing public, helping to optimise capital structure and attract investors. After all, the factors used to assess the value of securities for interested investors are the main criterion for obtaining the financing necessary for the business. Below we summarise some of the most common hybrid securities that have already gained significant ground in the investment world, some of which have already been regulated by law.

1. Introduction

The need for companies to find the ideal financial structure and financial developments at international level have led to the gradual "relaxation" of the principle of numerus clausus, i.e. the limited number of types of securities that, by law, can be issued by a public limited company (shares, bonds, warrants and founding securities). **In practice, this is achieved through the creation of modern financial instruments, which are either created by combining securities issued by a company so that they can only be acquired and transferred jointly (stapled securities) or by splitting the rights conferred by existing securities (stripped securities).** In such cases, legal certainty is called into question, but at the same time innovative and flexible forms of securities are created that are tailored to the de facto financing needs and intra-company relationships within the context of the business in question. From the perspective of investors – potential financiers, the ability to invest in securities that are aligned with their knowledge, experience, risk tolerance and investment objectives is an incentive to invest, giving them greater flexibility in their choices.

2. Stapling

The term stapling refers to the possibility of combining

several types or categories of securities issued by a public limited company (e.g. shares and bonds) into a single entity, so that they cannot be separated and transferred individually and can only be traded as a single entity (Article 33(3) of Law 4548/2018). In this way, complex financial products are created, depending on the needs of the company, and flexibility is provided in raising capital (e.g. linking shares to certain bonds, linking shares to share acquisition rights with or without restrictions on their disposal, etc.). In addition, the possibility of combining different securities may make the investment more attractive to investors, as it offers diversification in terms of their financial position in relation to the company and, potentially, better returns. At the same time, however, it may have a negative impact on the marketability of the securities, given the requirement for their simultaneous sale. Finally, it should be noted that the possibility of seizure of securities of only one type remains, despite the merger that has taken place.

3. Separate disposal of rights from securities - Stripping

The term stripping refers to the process of separating the economic rights of a share or other security into separate components so that they can be traded independently. In particular, pursuant to the provisions of Article 33(5) of Law 4548/2018, dividends, interest or instalments, as well as other independent property rights that

arise from securities (e.g. pre-emptive rights following a capital increase, rights to the proceeds of a capital reduction or amortisation, rights to the proceeds of liquidation, rights to expect profits for a specific financial year, options on share acquisition securities, separate distribution of bond interest, etc.) are freely transferable, subject in all cases to the terms of the articles of association and the terms of issue of the relevant securities. In any case, it should be noted that management rights (e.g. voting rights, minority rights, etc.) remain with the shareholder and are not separated. This facilitates the marketability of the securities and ensures the necessary liquidity for the company, while also allowing investors who are only interested in financial gain to avoid involvement in the corporate structure.

4. Hybrid forms of shares a.

Preference shares

Preferred shares are a special category of shares that provide their holders with certain privileges, which are specified in the company's articles of association (Article 38 of Law 4548/2018). Usually, they are linked to the restriction or absence of voting rights and, therefore, the non-participation of their holders in the corporate structure (unless otherwise specified in the articles of association). These shares are issued by a decision of the General Meeting, taken by an increased quorum and majority, and the terms governing them are specified in the articles of association. As a financial instrument with hybrid characteristics, they provide the S.A. with the possibility of financing itself without directly increasing its liabilities. They attract investors who want (usually stable) returns without getting involved in the corporate structure and decision-making. In any case, they may also be issued as (mandatory or upon exercise of a right) convertible into ordinary shares or preferred shares of another class, in accordance with the provisions of the articles of association. The most common financial privileges they offer are as follows:

– Preferred shares with interest-bearing rights

Preferred shares with dividend rights differ from ordinary shares, which are based exclusively on the distribution of profits through dividends, as they offer their shareholders a fixed income in the form of interest at a fixed amount or percentage of the nominal value of the share. However, the payment of interest is subject to the restrictions of Article 159 of Law 4548/2018, which stipulates that the distribution of dividends or interest is not permitted if the company's net position does not exceed the total capital, reserves and other items specified in this provision. This means that the privilege of receiving interest does not create an absolute claim for payment, but depends on the financial situation of the company. It is also possible to provide for cumulative interest, which allows unpaid interest to be carried forward to subsequent financial years where profits are available. The articles of association specify the amount of interest, the possibility of conversion into ordinary shares and the other terms governing them.

– Preferred shares with a fixed dividend

Preferred shares with a fixed dividend provide their holders with preferential financial treatment, ensuring a fixed income regardless of the profitability of the public limited company. The payment of a fixed dividend may be defined as a specific amount or as a percentage of the nominal value of the share, as specified in the company's articles of association, and is also subject to the restrictions of Article 159 of Law 4548/2018. Thus, if there are no distributable profits available, the holders of preference shares will not receive the expected dividend. An important advantage of preference shares is the possibility of a cumulative dividend. In this case, if the company is unable to pay a dividend in a given financial year, the amount not paid may be carried forward to subsequent financial years so that preferred shareholders can receive it when the company's financial situation allows. The duration of the privilege, the possibility of converting them into ordinary shares, the procedures

And other terms governing them are specified in the articles of association.

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– Preference shares with exclusive rights to participate in the profits of a specific corporate sector

– **Preference shares with exclusive rights to participate in the profits of a specific corporate sector**

Preferred shares with exclusive rights to participate in the profits of a specific corporate sector (also known as tracking shares) provide their holders with preferential financial treatment (share of profits) linked exclusively to the performance of a specific sector of the company's activity, as defined in the articles of association. The distribution of profits is, in any case, subject to the restrictions of Article 159 of Law 4548/2018 (i.e., it is only possible if there are distributable profits available). In addition, the articles of association may provide for a cumulative right, allowing undistributed profits to be carried forward to subsequent financial years. The specific terms (e.g. method of determining the profits of the specific sector, distribution methodology, etc.) are set out in the articles of association. This category of shares offers investors the opportunity to benefit directly from the performance of a specific segment of the company, without participating in the profits or losses arising from its other activities. It is therefore a flexible financial tool that also allows the company to maintain control over its strategic decisions.

b. Redeemable shares

Redeemable shares (Article 39 of Law 4548/2018) are a special category of shares that allow a public limited company or shareholder to demand their redemption under conditions specified in the articles of association. As a hybrid form of financing, it combines characteristics of equity and debt, allowing for flexibility in corporate strategy on the one hand and investor protection on the other. They may only be issued through a capital increase and may relate to both ordinary and preference shares. The possibility of

The redemption must be expressly provided for in the articles of association before the shares are taken up, and the shares must be fully paid up. The redemption is financed by distributable amounts, a new issue of shares or a capital reduction. In particular, the redemption process is triggered either by a declaration by the company (callable shares) or by a declaration by the shareholder (puttable shares). In the latter case, the company is obliged to proceed with the redemption only if there are distributable amounts available. The redeemed shares are subject to the regime of treasury shares, with the result that the public limited company does not proceed to an immediate reduction of its share capital, but rather makes an accounting entry as a deduction from its net position. The conversion of existing common shares into redeemable shares is permitted by a decision of the General Meeting, provided that shareholders are treated equally. Finally, the redemption is subject to disclosure and transparency requirements, aimed at protecting the interests of shareholders and third-party creditors of the public limited company. Redeemable shares are therefore a flexible financial tool that allows a company to adjust its shareholding structure and improve its financial structure, while ensuring the necessary legal and financial security.

5. Instead of a conclusion

In conclusion, the use of hybrid securities to finance public limited companies is an innovative and flexible option that combines the benefits of both issuing shares and taking out loans. By breaking down the numerus clausus principle, although this sometimes raises interpretative issues, companies gain access to modern financial instruments that reflect the constant evolution of the market and investors' needs for greater flexibility and adaptability. Companies are able to develop a more flexible financial strategy, while investors can choose securities that are aligned with their objectives and risk tolerance.

PROFIT DISTRIBUTION IN GENERAL AND LIMITED PARTNERSHIPS

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The article examines the process of profit distribution in general partnerships (O.E.) and limited partnerships (E.E.). It analyses the concepts of profit and loss, as well as the rights of partners in the distribution, as defined by law and the partnership agreement. It discusses the time and manner of the claim for payment of profits, emphasising that, in the absence of an agreement to the contrary, this claim arises at the end of the financial year. Finally, the possibility of retaining profits, i.e. not distributing them and carrying them forward to subsequent financial years, is examined, noting that this requires an express provision in the articles of association or a unanimous decision by the partners.

1. Introduction

Partnerships, i.e. general partnerships (O.E.) and limited partnerships (E.E.), are among the most common forms of corporate structures in the field of small and medium-sized enterprises. Their structure is based mainly on personal trust between the partners, which has a decisive influence on their operation and, in particular, on the distribution of profits. The process of profit distribution in these companies is governed by Law 4072/2012, the company's articles of association and the agreements between the partners.

Knowledge of the principles governing the distribution of profits in private companies is vital to ensure the rights of partners, maintain corporate cohesion and avoid legal disputes. This article examines how business profits are distributed in private companies, presenting the basic principles and procedures that apply, as well as the agreements that can influence this process.

2. Concept of Profit and Partners' Rights in Distribution

In private companies, profit or loss refers to the net result after taxation, as shown in the company's income statement for the tax year. The concept of profit or loss reflects the difference between the company's income and expenses, calculated on the basis of the financial data for the current and previous financial years. Thus, profit or loss reflects the increase or decrease in the company's assets in relation to the previous tax year

The distributable profit is the amount that remains available for distribution to the partners after covering the company's needs and any anticipated reserves. The right to participate in the results of the financial year is a general property right of the partner, which is inextricably linked to his corporate status and gives him the opportunity to participate in the company's profits or losses.

The right to participate in the results of the financial year is a general property right of the partner, which is inextricably linked to his corporate status and enables him to participate in the profits throughout the duration of the company. At the same time, the general right to participate in profits is established in the company's articles of association and cannot be transferred independently or be subject to seizure, even with the consent of the other partners.

The general right to participate in profits is established in the company's articles of association and cannot be transferred independently or be subject to seizure, even with the consent of the other partners, as it is an integral part of the company's identity. On the contrary, the claim for the payment of profits for a specific financial period, even a future one, may be freely assigned and seized.

Unless otherwise agreed, the partners participate in the profits in proportion to their share, while the partnership agreement may provide for a different method of distribution. If there is no relevant provision and the gap cannot be filled by interpretation, the profits will be distributed equally among the partners. The latter may always agree on a different distribution for a specific use.

3. Time of origin of the claim and method of satisfaction

In personal companies (such as general and limited partnerships), each partner's right to the company's profits arises as soon as the financial year ends. **The prevailing view in case law is that, in the absence of an agreement to the contrary, profits are distributed to the partners at the end of each financial year. Therefore, the prior preparation of annual financial statements or their approval by the partners' meeting is not a prerequisite for the claim for profit distribution to arise and be exercised.**

This position has also been adopted by the case law of our courts. **In particular, the Supreme Court, in its decision No. 1869/2022, confirmed that the preparation and approval of the accounts by the partners is not a prerequisite for the distribution of profits (unlike what happens in capital companies).** Only if otherwise provided for in the partnership agreement (articles of association) does another time or method of distribution apply – for example, the partners may agree to distribute profits at different intervals or to retain part of the profits as reserves. However, unless otherwise provided for in the articles of association, the time for exercising a partner's claim for the distribution of profits coincides with the end of the financial year.

Therefore, at the end of the financial year, each partner acquires an enforceable claim (i.e. the right to take legal action) against the company for their share of the profits. If the partner already knows the amount of net profits to which he is entitled, he can immediately claim it from the company (out of court or in court), since the claim is now considered due and payable from the end of the financial year.

If they do not know the exact amount, they have the option of verifying it by exercising their rights to information and accountability provided by law. Specifically, managers are obliged to provide full information to the other partners and to render account for their management. The preparation of financial statements for each financial year is, moreover,

the fulfilment of the managers' accountability obligation towards non-managing partners.

In any case, however, such as when it is not possible to exercise the right of accountability because the corporate status has been lost and the former partner wishes to receive the dividends to which he is entitled until the loss of that status, in the absence of an account, the company's tax return becomes important for the assertion of the claim to profits. the company's tax return becomes important.

4. Retention of profits in private companies

As mentioned above, in personal companies (general partnerships, limited partnerships), each partner is legally entitled to a share of the annual profits in proportion to their share in the company. If the company has a duration of more than one year, the financial results are closed and the profits are distributed at the end of each financial year, unless otherwise provided for in the articles of association.

The non-distribution of profits (retained earnings, e.g. by transferring undistributed profits "to new" to form reserves for subsequent financial years) is an exception to this rule and entails a restriction of the partners' right to profits. According to established case law, any decision not to distribute profits requires either an express provision in the articles of association or a unanimous decision by all partners at the general meeting.

In the absence of such an agreement, the manager is not entitled to unilaterally retain the profits in the company – such a unilateral decision to "carry forward" is invalid as it exceeds the manager's authority. In accordance with the principle of independence of financial years, the partners must decide each year (and, as a rule, unanimously) whether the profits for the financial year will be distributed or retained. If a partner does not agree to non-distribution, they retain the right to claim their share of the profits for the year (with statutory interest) in court.

Typically, the Supreme Court ruled that the managing general partnership, which transferred 50% of the annual profits to a new one without a unanimous decision by the partners' meeting, violated the right to profits.

of the other partners (who were legally entitled to their profits). Similarly, TrimEf Thrace 14/2023 confirmed that, unless otherwise provided for in the articles of association, profits must be distributed each year and that any "carry forward" requires a decision by all partners, while the Court of Appeal of Thessaloniki 1685/2011 ruled in favour of a partner who claimed his undistributed profits.

Therefore, the retention of profits in a private company is only possible if all partners agree (or if the articles of association expressly provide for a different method of distributing profits). Otherwise, each partner may claim (in or out of court) the distribution of their proportionate share of the profits.

5. In conclusion

The distribution of profits in private companies is a fundamental right of the partners and is regulated both by law and by the articles of association. Understanding the relevant provisions and clearly recording the agreements in the articles of association are essential for the smooth operation of the company and the avoidance of conflicts between partners. The timely and fair distribution of profits, in accordance with the prescribed procedures, strengthens trust and cooperation among the members of the company, contributing to the achievement of its business objectives and long-term sustainability.

The spin-off of a branch – now a common phenomenon in the business world, mainly due to tax advantages – is a type of corporate transformation and, specifically, one of the three permitted types of demerger (joint demerger, partial demerger and spin-off). In this article, we will focus on the liability towards creditors and third parties incurred, on the one hand, by the company carrying out the spin-off, transferring a branch of its activity ("demerging company") and, on the other hand, the company that contractually takes over the branch ("beneficiary").

1. Introduction – Key features of spin-offs

The spin-off of a branch as a specific form of division was first provided for by law in Law 4601/2019. Until then, it functioned as a peculiar, abusive transformation. Its basic characteristics are as follows:

- Not all of the assets and liabilities of the split company are transferred, but only those of the specific branch of activity. A branch is considered to be the totality of items (both assets and liabilities) which, from an organisational point of view, constitute an autonomous operation, i.e. a whole capable of functioning independently (e.g. real estate management and exploitation sector, infrastructure sector, software production sector, etc.). A segment requires separate accounting monitoring or at least the ability of the company to isolate the revenues relating to it in order to demonstrate its autonomy.
- The split company remains a legal entity and continues to operate in relation to its other business segments, unlike in a common split, where the transfer of the company's business is comprehensive and the legal entity of the split company is dissolved. This obviously requires the legal entity to maintain more than one branch of activity in order to continue operating after the spin-off.
- The net position of the branch is contributed (following an asset and liability valuation report), increasing the share capital of the beneficiary (by the amount of the net position). In other words, this is an increase in the share capital of the beneficiary company through a contribution in kind. In return, the

The demerging company receives shares or partnership interests in the beneficiary company and becomes a shareholder or partner in that company, with the distribution as provided for in the demerger agreement. This is where the main difference with a partial division lies, in which a branch of activity is similarly transferred, the divided company is retained as a legal entity, but the shareholders of the company being split participate individually in the capital of the beneficiary after the completion of the split, rather than the company itself.

- It can be carried out either by the absorption of the branch by an existing company (one or more), or by the separation of the branch into a newly established company (one or more), or by absorption and the establishment of one or more new companies.
- The beneficiary automatically assumes, without any further formalities, the rights and obligations relating to the branch of activity it takes over as the universal successor of the split company, based on an explicit legislative provision (Article 70 of Law 4601/2019). Universal succession also extends to all pending contractual relationships of the split company, which are included in the part of the split company's assets transferred to them, e.g. employment contracts of employees included in the transferred branch. Due to universal succession, pending lawsuits concerning the branch are automatically continued by the beneficiary company, without any violent interruption.

2. Joint and several liability of the transferred and beneficiary companies towards creditors

The belief that, with the split, the split company is automatically released from its obligations

and debts of the branch, shifting the burden to the new company that takes it over, is not accurate. **The creditors of the split company are suddenly faced with a new reality: they are required to seek satisfaction of their claims (which are included in the transferred branch) from a different legal entity, which may be less solvent than the split company with which they had originally contracted.** For this reason, the legislator has chosen to better protect creditors' claims by establishing, under certain conditions, joint and several liability between the split company and the beneficiary company for the obligations of the branch.

More specifically, according to Article 65(4) of Law 4601/2019, if a claim of a creditor of the split company that arose before the completion of the split and was subsequently assumed by the beneficiary company has not been satisfied, especially in the event of unsuccessful enforcement or declaration of bankruptcy of the beneficiary, both the beneficiary and the split company are jointly and severally liable for this claim. It is clear from the wording of the law that liability for the obligations of the branch that existed prior to the spin-off lies primarily with the beneficiary company, but under certain conditions the spun-off company is also jointly liable (auxiliary liability similar to that of a guarantor). Of course, for obligations arising after the spin-off, the beneficiary company is solely liable.

The conditions for joint and several liability of the beneficiary and the split company are as follows:

- a)** A creditor's claim against the split company that is included in the transferred branch "as an obligation" already existing at the time of the spin-off.
- b)** Attempt to satisfy the creditor initially by the beneficiary company.
- c)** Inability to satisfy the creditor either due to fruitless enforcement proceedings or due to the bankruptcy of the beneficiary company.

If all of the above conditions are met, the creditor may seek satisfaction from the split company. **It should be noted that**

claims against the split company are time-barred five (5) years after the completion of the split, after which they remain enforceable only against the beneficiary company (Article 65(4)).

3. Defence of the split company

a) Objection to payment: If the above conditions are not cumulatively met, the subsidiary company may raise an objection to payment by analogy with Article 855 of the Civil Code, i.e. it may refuse to pay the debt until the creditor has proven that the subsidiary company is liable. may raise a defence of division by analogy with Article 855 of the Civil Code, i.e. **it refuses to pay the debt until the creditor has brought enforcement proceedings against the beneficiary and these have been unsuccessful.** In the latter case, the creditor's action against the split company is provisionally dismissed, but the creditor may return with a new action if he attempts enforcement against the beneficiary. Exceptions are cases of obvious insufficiency of the beneficiary company's assets, e.g. complete lack of assets or previous unsuccessful enforcement by another creditor, in which case the creditor may exercise his claim directly against the split company.

b) Objection to release: Another important weapon in the defence of the divided company is the invocation of Article 862 of the Civil Code by analogy, whereby if the creditor's satisfaction by the beneficiary company has become impossible due to the creditor's fault (e.g. long-term inaction on the part of the creditor and a reduction in the assets of the beneficiary in the meantime), then the split company is released and the creditor cannot take action against it.

4. Right of recourse in the context of joint and several liability

Given that the beneficiary company bears primary responsibility for satisfying the obligations of the sector, while the liability of the split company is only secondary, if the beneficiary satisfies the creditors in question, it does not have the right, according to the prevailing view, to seek recourse against the split company for the amount it paid (however, there is also a contrary view).

On the contrary, the split company that was forced to pay the claim (provided that the above conditions are met) may claim what it paid from the beneficiary company by exercising its right of recourse. As regards the allocation of liability between them and the regulation of their internal relationship (on which the extent of liability and, respectively, the right of recourse will be determined), there may be a relevant provision in the spin-off agreement. If this is not the case, Article 487(1) of the Civil Code applies, according to which the above companies are liable in equal shares.

5. Creditors' right to provide guarantees

Another right granted by Law 4601/2019 to creditors of companies participating in the spin-off is the possibility to request, as a precautionary measure, within thirty (30) days of the publication of the spin-off plan in the General Commercial Registry (G.E.M.I.), appropriate guarantees (indicatively, suretyship, provision of collateral, etc.) (which must be provided before the date of the meeting to decide on the spin-off). (which takes place before the date of the meeting to decide on the spin-off) appropriate guarantees (indicatively, suretyship, provision of a mortgage or registration of a mortgage on real estate, pledge on movable property), provided that they sufficiently demonstrate that the financial situation of the companies due to the demerger makes it necessary to provide such guarantees and provided that they have not received such guarantees. This right applies to **creditors of both the beneficiary and the split company who have claims arising before the time of the split that have not yet fallen due at that time**. The creditors of the beneficiary are equally at risk, even though the identity of their debtor remains unchanged, from a possible deterioration in the financial structure of the company after the division.

6. Protection of creditors under common law provisions

The question has been raised as to whether the special protection afforded to creditors of the split company by Law 4601/2019 prevails as a more specific provision over the protection afforded by the common provisions, or whether the latter can be applied.-

in a complementary manner. According to the prevailing view, in the event of a spin-off, the creditors of the spun-off entity may additionally exercise their claims on the basis of the common provisions of Articles 479 of the Civil Code (on the transfer of a business) and 939 of the Civil Code on the defrauding of creditors, provided that the specific conditions thereof are met, without having to wait for the non-satisfaction required by Article 65(4) to arise.

The problem, however, becomes more acute in the case of an action for annulment (Article 939 of the Civil Code), in which the creditors of the transferor may seek to annul the expropriations if the latter's assets are insufficient to satisfy them (transfer of the debtor's property by fraudulent means). If the action is successful, the transfer of the assets of the split entity (assets of the transferred branch) cannot be opposed, making them once again available for the satisfaction of the plaintiff creditors. However, in practice, this leads to a reversal of the spin-off, even though the grounds for annulment of the spin-off agreement are clearly specified in the law and the case in question does not fall within them.

7. In conclusion

As can be seen from the above analysis, the legislator, recognising the risk faced by the creditors of companies participating in the spin-off of a branch of activity, especially the one being split, where the debtor company basically changes, decided to establish, under certain conditions, the secondary liability of the company being split, in addition to that of the beneficiary. In this context, the supplementary protection of this category of creditors is also accepted by the provisions of ordinary law in order to better protect their interests.

DEBTOR DEFAULT: INSUFFICIENT ASSETS AND CRITICAL TIME

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May

The purpose of the action for the enforcement of creditors' claims (paucian action – Civil Code 939 et seq.) is to protect the creditor's ability to satisfy his claim through the process of compulsory enforcement. The latter, of course, presupposes the existence of the debtor's assets, on which the creditor will impose compulsory seizure, which is why the fraudulent disposal of the debtor's assets (often to relatives) before the creditor can seize them is dealt with through the action in question. On the other hand, the debtor's constitutionally guaranteed right to freely dispose of his property to whomever he wishes and under whatever conditions he wishes should not be overlooked or restricted, except in very specific circumstances. The debtor's interest in freely disposing of his property is enshrined in law through Article 361 of the Civil Code and the principle of freedom of contract, while the constitutional protection of this freedom is provided by Article 5(1) of the Constitution and the principle of free development of personality. In this article, we will examine one of the elements required to establish the creditor's right to claim the annulment of an expropriation as fraudulent. This is the insufficiency of the debtor's remaining assets (debtor's insolvency) to satisfy his creditors.

1. The expropriation by the debtor of an asset does not, in principle, establish the creditor's right to set aside that disposal. At the same time, damage must be caused to the latter, which occurs when the debtor's other assets are insufficient to satisfy the creditor's claim. For this reason, in case law, the concepts of 'insufficient assets' and 'causing damage' are identified with each other and the two terms are used interchangeably (see Rizos E., Doctoral Thesis, The conditions for the annulment of fraudulent conveyance [With emphasis on the creditor's claim], p. 166, as well as established case law, see, for example, Decision No. 458/2019 of the Court of Appeal of Thessaly, Decision No. 150/2022 of the Court of Appeal of Larissa, in TNOMOS NOMOS, etc.).

2. In order to overturn an expropriation, it must prevent the creditor from being satisfied in the absence of other assets of the debtor that are suitable for seizure by the creditor. Insufficiency of assets is not only a matter of the debtor having no other property, but also when, for example, it is difficult to liquidate the debtor's remaining assets or when the assets remaining to the debtor after the expropriation are encumbered with collateral (pledge, mortgage), so that in practice the creditor's satisfaction is again frustrated. It should also be noted that the

the creditor's loss is not affected by the fact that other persons are also liable to the creditor in respect of the same claim. The insufficiency of assets is examined individually and in relation to the expropriating debtor.

3. The question that arises is: **at what point in time will the above element of the actual circumstances of AK 939 et seq. be assessed? In other words, when should the debtor's assets be insufficient to justify a decision that would invalidate the fraudulent alienation on the part of the debtor?**

4. According to established case law and theory, **the decisive moment is that of the filing (service) of the creditor's action. It is then that the adequacy or inadequacy of the debtor's assets should be assessed.** The following distinctions are made:

- If, at the time of the expropriation, the debtor had other assets sufficient to satisfy the creditor, but lost them by the time the action was brought, then the element of insufficiency of the debtor's assets is fulfilled as an element of the legal form of the rule of law of AK 939ff. **However, there may be another element, that of fraud.**
- If, at the time of expropriation, the debtor did not

have any other assets, but acquired them before the action was brought and, as a result, his assets are deemed sufficient, the action for revocation should be dismissed as unfounded.

5. In fact, the critical point in time is not even the time when the action is brought, **but the time of its discussion**, although with the new regular procedure introduced by Law 4335/2015, this point in time is shifted to the last day of filing proposals under Article 237.1 of the Code of Civil Procedure. In any case, the acquisition of assets after the submission of proposals capable of satisfying the creditor and dismissing the action for fraud could be submitted as an additional claim no later than 20 days before the formal hearing of the relevant action pursuant to Article 237.5 of the Code of Civil Procedure.

6. At this point, it should be noted that the time at which the objective condition of the debtor's insufficient assets is assessed is different from the time at which another subjective condition for the breach of a legal act as fraudulent is assessed, namely the existence of intent (or even possible malice) on the part of the debtor to harm his creditors.

7. Specifically, among the other conditions for the annulment of a legal act as fraudulent is the element of intent. In other words, the debtor must know and seek, or at least accept, that by transferring the property in question, he will frustrate the satisfaction of his creditors. This element **is assessed at the time when the disputed alienation took place**, because that is when the debtor exercises his power to dispose of his right to the detriment of his creditors, and it is at the time of his action that his culpability must be assessed.

8. Therefore, there are two distinct conditions (objective and subjective) which, although intertwined, are examined at two distinct points in time:

– **the subjective condition (the debtor's intention to harm**

his creditors through expropriation) at the time of the transfer of property,

– **and the objective condition (insufficiency of the debtor's other assets to satisfy his creditors) at the time the creditor brings the action for annulment.**

9. Sometimes, though, case law mixes up these two points in time in a way that's not allowed. Decision No. 1795/2019 (unpublished) of the Athens Court of First Instance notes:

"...This conclusive finding (i.e. the debtor's fraudulent intent) is not negated by the fact that at the time of the disputed transfer, the first defendant held 52% of the shares of the primary debtor company, a percentage that was valued on 15/12/2010 (note that the transfer of assets took place on 6/2010) at €1,991,232.00. **This is because, at the time the action in question was brought (i.e. in 2015), which is the time at which the debtor's insolvency and damage to creditors is assessed, only when the debtor's assets are insufficient at that time, the shares in question had no value...**'. Similarly, decision no. 77/2022 of the Court of Appeal of Patras (TNOMOS): "... It follows from the provisions of Articles 939 et seq. of the Civil Code that any creditor whose claim arose at the time of the attempted expropriation is entitled to request the annulment of the expropriation, within the meaning of Article 939 of the Civil Code, even if it is subject to a time limit or is conditional or unconfirmed, provided that the debtor intended to frustrate the satisfaction of the claim. the expropriation was attempted, even if it is subject to a time limit or is conditional or unresolved, provided that the debtor intended to frustrate the satisfaction of that claim [...] the conditions for the protection of the creditor are: [...] b) expropriation with the intention of harming creditors, which is deemed to exist when the debtor knows that the expropriation of his property will place him in such a financial situation that his remaining property will not be sufficient to satisfy his creditors, c) there must be harm to creditors, which exists when the debtor's remaining assets are insufficient to satisfy the plaintiff creditor, in which case the debtor's insolvency, which is an element of the basis of the action [...] must exist at the time the action is brought, which is the decisive time for the

determination of the damage suffered by the creditors, which exists only when the debtor is insolvent at that time [...] Consequently, the above remaining immovable property of the first defendant is not sufficient to satisfy the plaintiff's claim [...] It is therefore clear that the above property of the first defendant is not sufficient to satisfy the plaintiff's claim against him, due to the significant encumbrance of the aforementioned liabilities and debts, which nullify its value. **Accordingly, at the time the action was brought, the first defendant's remaining assets were insufficient to satisfy his obligation to the plaintiff [...] The first defendant further claims that, at the time he transferred the disputed property, he had no intention of harming the interests of the plaintiff [...] However, in accordance with the above main consideration, the intention to harm creditors is considered to exist when the debtor knows that the expropriation of his assets will place him in such a financial situation that the remaining assets will not be sufficient to satisfy his creditors. In the present case, the intention to cause harm, in the above sense, was proven since, as mentioned above, the remaining assets of the first defendant are insufficient to satisfy the claims in question [...].**

10. Both of the above decisions show that case law considers the subjective element of intent at a later date than the objective element of insufficient assets. Influenced by the debtor's financial situation at the time the action was brought, which is insufficient to satisfy his creditors, it fails to refer to the time of the transfer of assets and to examine the debtor's internal situation at that crucial time. **It thus arrives at the paradoxical conclusion that the debtor had (at that time) the intention to harm his creditors, because (today) his assets are insufficient to satisfy them.**

11. Of course, a correct judicial decision on whether or not the debtor acted with intent would require a review of the time of the expropriation and consideration of all the debtor's subjective representations at that time; a) the creditor's security in the form of collateral, b) the existence of other assets of the debtor to satisfy the creditors, such as shares (regardless of whether they lost their value in subsequent years) and c) the existence of more jointly liable debtors **are circumstances capable of excluding the debtor's intent.** Indeed, if at the time of the expropriation the debtor considers it possible to satisfy his creditor due to his own financial situation and that of any other co-debtors, it is impossible to exclude the existence of intent on his part to harm his creditors. This is regardless of: a) the reduction in the value of the debtor's remaining assets at the time the action is brought, which may be as long as five years after the expropriation, and b) the above position of case law that the condition of insufficiency of assets is examined individually, i.e. only in relation to the expropriating debtor. This position of case law, which is reflected in both of the above decisions, concerns precisely the objective condition of insolvency and is not related to the subjective element of fraud.

In conclusion

Intent concerns the debtor's inner world. Of course, the conclusion as to whether or not it is present in the context of the Paulian action will be based on objective facts of the external world contemporary, in any case, to the expropriation in question. However, cannot be the insufficiency of the debtor's assets, because as an independent condition for the annulment of an expropriation as fraudulent, it is examined at a much later time than the completion of the transfer of assets by the debtor.

THE FOUR (4) RISK FACTORS WHEN ENTERING INTO A PROFESSIONAL LEASE

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Particular attention is required when drawing up a commercial lease, especially on the part of the prospective lessee, who, given the usually high rent agreed for this type of lease, should already at the negotiation stage carefully examine all the terms of the agreement to be signed with the lessor in order to avoid unpleasant surprises that could cause them significant damage. In this article, we draw the attention of the lessee to four key points that should be checked in good time, before the lease agreement is concluded and before the lessee undertakes any work or incurs any expenses on the leased property.

A. Check the description of the property in the lease agreement to be signed by the parties and check the actual condition of the property.

A very important point, which should not be overlooked by the prospective tenant, is to carefully check the description of the property, which should be reflected **in as much detail as possible in the lease agreement** to be signed. In particular, the tenant should examine whether **the actual condition of the property**, as it stands **at the time of drawing up the lease**, matches the description of the property in the lease agreement in terms of the type of property (i.e. whether it is a shop, office, warehouse, etc.), its exact address, its area, the spaces of which it consists, the annexes, auxiliary spaces and their descriptions, the exclusive use of any common space, while particular attention should be paid to the inclusion of details that distinguish the leased property in the applicable deed of establishment of horizontal or vertical ownership, which, it should be noted, must be thoroughly checked by the lessee (especially with regard to any amendments thereto). Finally, the lessee should be fully aware of the ownership status of the property to be leased. For the above purposes, the lessee is required to carefully check the title deeds of the property.

In addition, the lessee should ensure that the lessor provides a detailed description of the leased property in the lease agreement to be signed, so that they **can** then reliably **check** whether

the time of concluding the lease there are **any unauthorised constructions**. These unauthorised structures will be identified by comparing the actual condition of the leased property with that recorded in the documents of the competent urban planning authority, such as the floor plan of the leased property, the original or revised building permit for the leased property, etc., which the lessee should have taken care to check thoroughly.

B. Checking the building permit issued and the permitted uses of the land of the property to be leased.

Often in practice, and even after the lease agreement has been signed, serious problems arise in the relationship between the contracting parties (lessor - lessee), which concern complex issues relating to the legislation in force for the legal use of the leased property and which have a negative effect on their contractual relationship, even leading to the termination of their cooperation. This is because violation of these provisions **results in the prohibition of the lease** of the property where the violation occurred and the consequent invalidity of the lease. More specifically, according to Article 82(1)(b) of Law 4495/2017: *"(b) The leasing and transfer of properties on which unauthorised construction has been carried out or unauthorised changes of use have been installed, in accordance with the provisions of Article 81(1)(a) and (b), is not permitted."* In fact, if the illegality is detected, as mentioned above, during the term of the lease agreement (which implies the

invalidity thereof) and the lessee has approved the terms relating to the building permit and the permitted uses of the leased land, he shall not be entitled to any compensation from the lessor. At the same time, the lessee will be faced with serious problems that could put an end to their professional activity on the leased property, as the competent urban planning authority, which will identify the illegality in the event of an inspection, will impose penalties, including high administrative fines, disconnection of the leased property from public utility networks, disconnection from electricity, water, sewerage, telecommunications and natural gas networks, and finally sealing the leased property, which will result in the cessation of the business's operations.

In commercial leases, therefore, in order for the lessee's business to operate legally in the leased property for the agreed use, the leased property must have the characteristics required by law for the agreed use. The prospective lessee must therefore carefully check both the **building permit issued**, in order to ascertain the use for which it was issued (e.g. for use of the property as a shop, warehouse, etc.) in relation to the use of the leased property described in the lease, as well as the **permitted uses (professional activities) in the area where the leased property is located**, i.e. what are the permitted uses of the property to be leased under the law and under what conditions. uses of the property to be leased and under what conditions. On this issue, we note that **the building block in which the leased property is located should be examined**.

In addition, apart from the conditions provided for in urban planning legislation for the permitted uses of the property, it should be examined whether the use is permitted based on the provisions of the apartment building regulations. This is because, if a certain use of the property is prohibited by the Regulations, the relevant term of the Regulations must be amended, which requires

the agreement of the co-owners and is therefore a particularly difficult process from a practical point of view.

It is therefore extremely important for the tenant to contact the lessor and request both the documents contained in the file of the building permit approved by the competent urban planning authority (original or amended), as well as the apartment building regulations (if any), so that the tenant can ascertain with certainty whether the landlord has made any **unauthorised changes to its use**. **An unauthorised change of use of the leased property occurs** when the leased property is leased and **used for a purpose other than that which has been legally approved and is valid under town planning regulations** (see Article 81 of Law 4495/2017: "*An arbitrary change of use is defined as any change of use for which the required building permit (building licence) has not been issued.*") If the above unauthorised changes are found in the leased property, the lessee who is interested in leasing the property must immediately request the lessor to regularise them in accordance with the applicable urban planning legislation and, in fact, request the lessor to include in the lease to be signed the details of the completion of the relevant action - regularisation (e.g. number of the issued act).

C. Checking the financial situation and creditworthiness of the prospective lessor in conjunction with checking the Land Registry Sheet of the leased property.

Particular attention is required on the part of the prospective lessee before drawing up the commercial lease agreement with regard to checking the financial situation and creditworthiness of the counterparty – lessor, so as not to be caught off guard in the event of a possible scenario of forced enforcement against them by one of their creditors.

Therefore, in the event that the lessee, following a relevant check in the Land Registry, identifies

Lease Sheet, the registration of encumbrances (mortgages, pre-notations, etc.) on the property they are interested in leasing, they should immediately contact the lessor and ask for assurances regarding the payment of their debts secured by the relevant encumbrance, e.g. letters from the lessor's creditors confirming that everything is in order, a copy of the card from "Tiresias", Credit Score, etc. In this way, the lessee will be able to assess the situation of their counterparty and predict to a significant degree the likelihood of foreclosure or non-foreclosure on the property in question.

Otherwise, i.e. if the above is not checked, there is a serious risk that if the leased property is seized and ultimately auctioned off and awarded to a new owner, the lessee will be forced, following termination of the lease by the new owner, **to vacate the leased property** (for which he may already have carried out work and incurred significant expenses) and be forced to find and secure another space to run their business, and to do so within a very short and pressing deadline, **either two (2) months from the registration of the award report in the competent Land Registry, if the seizure has already been imposed before the property was leased, or within six (6) months of the termination of the lease by the new owner, if the seizure is imposed after the property has been leased.** It should be noted that the new owner will be able to immediately enforce (without any other legal action) the summary of the award report against the lessee.

D. Checking the content and extent of the tenant's liability for rental costs.

The last point that the tenant should pay attention to in order to ensure maximum protection in a possible legal dispute with the landlord is the allocation of necessary and beneficial lease expenses, beneficial and, in particular, common expenses. In particular, when concluding commercial leases, it is customary for particularly high expenses to arise

, which are related to the large surface areas of the leased properties that are basically the subject of commercial leases and which are usually borne by the lessee.

Therefore, the lessee should carefully check the amount of expenses relating, for example, to common services and their maintenance, such as the use and maintenance of commercial and large lifts in the leased property, lighting of common areas, maintenance of common vehicle and pedestrian access routes, garden maintenance, waste collection, security services, etc., in order to negotiate a reasonable and fair possible allocation of the above costs.

In conclusion

In summary, after evaluating the above, which often conceal risks in the field of professional leases, the lessee is called upon, from the stage of negotiations with the lessor, to exercise due diligence and attention **to the four (4) key points mentioned above**, because if they escape his attention, there is a significant risk that a lease agreement will ultimately be signed whose terms either do not meet the requirements of the law or will be burdensome for the lessee, who, in fact, sometimes in such leases (i.e. professional) undertakes unfavourable and burdensome terms without being fully aware of their consequences.

PROTECTION OF MINORITY SHAREHOLDERS – ABUSIVE DECISIONS BY THE GENERAL MEETING

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One of the pillars of the law governing public limited companies is the protection of minority shareholders against the majority group of shareholders, which usually controls the company's management. This protection is achieved, in addition to the specific institutions provided for in Law 4548/2018 (e.g. minority rights, bringing corporate actions, etc.), by giving the minority the option to ask for the cancellation of decisions made by the General Meeting that were taken by abusing the majority's power.

1. Introduction

In a previous article, we presented the ways in which the majority shareholders try to gain financial advantages by exploiting the minority. On the other hand, the law provides the minority with a number of rights in order to be able to safeguard its interests in the company. Among these, minority rights occupy a prominent position, in particular the right to information, the right to extraordinary control, and the possibility of requesting the exercise of corporate action (either by the board of directors or after appointing a special representative).

One of the most important weapons available to the minority, which is examined in this article, is the possibility of requesting the annulment of a decision of the General Meeting (hereinafter GM) taken through abuse of power by the majority. This article therefore examines the issue of abusive decisions by the GM through case law examples.

2. Cases of abusive decisions by the GA

2.1. General

According to the provision of Article 137(2) of Law 4548/2018: "A decision is also voidable if it was taken: [...] in abuse of the majority's power, under the terms of Article 281 of the Civil Code." This provision, referring to the provisions of the Civil Code on the abusive exercise of rights, gives the judge a wide scope for assessing behaviour as abusive. Below, we discuss

cases of abusive behaviour that are often encountered in corporate reality and have led to the annulment of general meeting decisions.

2.2. Retention of profits and remuneration of dividends.

This is the case where the majority shareholder(s) decide to grant high remuneration to the management of the public limited company, which they themselves have elected (often even granting remuneration consisting of the profits for the financial year) and at the same time decide not to distribute dividends to shareholders, or to distribute them to a lesser extent.

A typical case is that ruled on by the recent **Supreme Court decision 1462/2023**. The circumstances on which the abusive nature of the above decision was based were as follows:

- The majority shareholders - co-directors reduced the company's profits by a) receiving, as members of the Board of Directors, excessive remuneration from the company's profits that did not correspond to its financial data and b) by receiving concealed remuneration through the artificial increase of the company's administrative operating expenses.
- They carried forward almost all of the profits, amounting to €5,716,763.30, to the following financial year, distributing a dividend of only €100,000.00.
- The minority shareholder had provided a personal guarantee and had pledged mutual fund shares to secure a loan that the company had received from a credit institution.
- In the case in question, it was a small/closed family-owned public limited company.

Taking these facts into account, the court ruled that the decision of the general meeting was invalid due to abusive behaviour on the part of the majority.

Similar circumstances were also considered in MEfThes 587/2023, which annulled a decision of the ordinary General Meeting, which decided not to distribute dividends to shareholders, approving remuneration of €450,000.00 to members of the Board of Directors and carrying forward profits of €3,190,058.30, while profits for the year amounted to €3,410,122.08.

2.3. Sale of the company's core assets.

A decision by the General Meeting may also be deemed abusive if, without any obvious business purpose serving the interests of the company, it sells off the company's basic assets.

A typical example is the case ruled on by the Athens Court of Appeal 1130/2020, which ruled that a decision of the General Meeting to sell the electricity production and sales division, whose turnover constituted the company's total turnover, at a price lower than the value at which the division was valued, while the proceeds from the sale were insufficient to repay the company's obligations to its creditors. No organised, financed and immediately implementable investment plan was demonstrated for the other real estate development branch under creation, which would cover the company's existing liabilities and ensure its prospects for development.

2.4. Decisions that benefit companies affiliated with the majority at the expense of the company.

In corporate reality, it is common for the majority to try to transfer assets from one company to another company that it also controls. In this way, the

first of these companies to the detriment of the other, with obvious damage to the minority shareholders.

Such a case was dealt with in PPraAth 2191/2011, where a decision of the General Meeting was ruled invalid as abusive, whereby it was decided to assign design projects – which the company itself had the necessary technical expertise and specialised personnel to carry out – to another company, which is controlled and managed by the same majority, while the latter company's field of activity was the construction of projects and not design projects and, therefore, it would assign the design work to third parties.

As the decision characteristically stated: *"In view of the above, the approval of the assignment of the above projects to [...] by the General Meeting took place in abuse of the majority's right, i.e. in clear excess of the extreme limits of good faith, its social and economic purpose, as they were not dictated by the interests of the company, but with the sole purpose of serving the company [...], which is controlled and managed by [...] and [...]"*.

2.5. Decisions to increase the share capital with the aim of changing the balance of power.

A decision to increase share capital may be deemed abusive when the decision is taken by a majority of shareholders with the aim of weakening the minority by changing the shareholding structure of the company, the capital increase is not objectively necessary for the company and the majority is aware that the minority shareholders are unable to participate in the planned increase due to their financial weakness (see also PPraAth 5885/2010, TNOMOS).

The criteria for determining unfairness are as follows:

- a) There is no specific and particular need for the company to proceed with the capital increase in question.

share capital.

b) The majority shareholder(s) are aware that the minority shareholder(s), due to their actual financial weakness, are unable to participate in the upcoming capital increase.

c) The purpose of the capital increase is solely to alter the shareholding structure of the company and weaken the minority, which, as is well known, cannot participate in the increase for financial reasons.

We have analysed this case of an abusive decision by the General Meeting in detail in another article, to which we refer.

3. In conclusion

The possibility for the minority to request the annulment of a General Meeting decision as abusive is perhaps the last resort for its protection against a majority that is trying to impose its interests. However, any claim by the minority will only result in the annulment of the decision, as the court cannot formulate that decision or force the majority to take a decision with specific content. However, the pressure exerted on the majority through the annulment of the decision may constitute a significant obstacle to any abusive intentions on its part.

FROM STAMP DUTY TO DIGITAL TRANSACTION TAX – THE CHANGE OF GUARD IN THE TAXATION OF CASH FACILITIES AND OTHER CREDIT TRANSACTIONS

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In this article, we approach the tax treatment of common financial transactions between companies and their shareholders/partners or between affiliated companies, based on the new law on digital transaction fees, with references to the positions of the tax authorities, as formulated in the light of the abolished stamp duty.

Introduction

In Greek business practice, it is common for participants in commercial companies to deposit sums of money with them in order to strengthen their liquidity. The same phenomenon is also evident in the case of loans between affiliated companies (e.g. from a parent company to a subsidiary). In this way, the recipient companies cover their immediate obligations to the State, credit institutions, employees or suppliers and are burdened with the obligation to repay the above amounts to their partners/shareholders or the affiliated company, as the case may be.

This transaction is, in essence, a loan from the shareholder/partner/affiliated company to the recipient company. However, from the point of view of stamp duty (and, already, digital transaction fees), this transfer of funds may be treated differently, depending on the case. Loans, current accounts or cash facilities are the three categories under which the granting of sums of money by shareholders/partners, affiliated companies or third parties in general, persons to a company, with the aim of directly covering the latter's financial obligations.

In this article, we will examine the above categories in light of the newly introduced digital transaction fee (hereinafter referred to as DTF), in conjunction with the assumptions of the tax administration, as formulated under the now abolished stamp duty regime.

A few words about the new law

Law 5135/2024 marked a further step towards the digital transformation of the tax system, with the replacement of the stamp duty by the digital transaction fee. The legislator set as its goal the modernisation of transaction taxation through the establishment of a simplified procedure that ensures predictability in cases subject to the DTT — an element that was absent from the stamp duty regulation, resulting in uncertainty and lack of transparency.

Law 5135/2024 has already been codified by Law 5177/2025 and forms part of the Indirect Tax Code (Government Gazette A' 21/14-02-2025). Thus, the first book of Law 5177/2025 lists specific transactions subject to the digital transaction tax, in order to remove any doubts as to the object of taxation, while specifying the subject of taxation and the tax rates. Furthermore, **the new law bends the so-called principle of formality: for the purposes of the digital transaction tax, it is the concept of the transaction that is decisive, not the document.** Therefore, it is not necessary to draw up a document or make an entry in the books in order to impose a digital transaction tax, but rather to draw up a contract verbally or electronically. At the same time, the new framework also relaxes the principle of territoriality to the extent that, for the digital transaction tax to be imposed, it is crucial that at least one party to the transaction has tax residence or a permanent establishment in Greece.

Under the new regime, the digital transaction fee return is submitted electronically via the "myAADE" digital portal, with the content and

in accordance with the procedure set out in Decision No. 1149/2024 of the Governor of the AADE. **The provision of Law 5177/2025 on the imposition of a digital transaction fee on loans, current accounts and deposits/withdrawals.**

The DST is imposed on acts, contracts and transactions drawn up or carried out from 1 December 2024, while transactions drawn up until 30 November 2024 are subject to stamp duty (Article 31(2) of Law 5177/2025).

The provision of Law 5177/2025 on the imposition of a digital transaction fee on loans, current accounts

and deposits/withdrawals:

Law 5177/2025, in Articles 7-9, regulates in detail the inclusion of loans, current accounts and deposits/withdrawals (essentially, so-called **cash facilities**) in the DTT. The relevant provisions specify the applicable rate, depending on the characteristics of the transacting parties, the person liable in each case to submit a declaration and pay the PSF, as well as any applicable maximum limit for its imposition. The regulation is analysed in the table below:

Category	Case	Rate	Liable party	Maximum Limit PSL
Loans (Article 7)	1. All parties to the transaction are natural persons engaged in business activity and the loan is granted in connection with it 2. At least one counterparty is a capital/personal company	2.40%	The borrower	€150,000 per loan
	All other cases	3.60		
Current or Mutual Debtor Account (Article 8)	1. All contracting parties are natural persons with business activity and the loan is granted to relationship with it 2. At least one is capital/personal company 3. Transactions between a company (capital or non-capital) and shareholders/partners	2.40%	The trader whose accounting records show a credit balance	€150,000 per tax year
	All other cases	3.60%		

Deposits & Withdrawals (Article 9)	Deposits/withdrawals from and to capital or personal companies	1.20%	The legal entity/ entity the funds available funds of which are subject to deposit/withdrawal
	All other cases	3.60%	

With regard to the liable person, it is important to note the specific provision introduced by Law 5177/2025: in accordance with Article 3(4)(c), where one of the parties to the transaction is a legal entity and the other is a natural person, the legal entity is liable for the payment of the PSF. Therefore, in the case of a loan granted by a legal entity to a natural person, the legal entity is liable for the payment of the withholding tax, even though it is not the debtor of the loan.

Whether a financial transaction between a company and one of its shareholders/partners is treated, from a withholding tax perspective, as a loan or a simple deposit/withdrawal or whether it is part of the operation of a current transaction account depends on the circumstances of each case under consideration. As will be shown below, the general accounting recording of the transaction in the company's books is crucial in all cases.

The imposition of a digital transaction fee on deposits/withdrawals:

Article 9 of Law 5177/2025 expressly stipulates that a digital transaction fee is imposed on deposits and withdrawals to and from legal persons and legal entities, carried out by partners, shareholders or other persons, provided that these are not withdrawals against profits, when the deposits or withdrawals are not made under a specific contract. If there is a special contract, the existence of a loan or current account will be examined for the imposition of the FTT, in accordance with Articles 7 and 8 of the same law.

Under the previous regime, in order for deposits

or withdrawals to be subject to stamp duty, the tax authority required that all of the following conditions be met (see, for example, **Decision No. 73/2020 of the Dispute Resolution Directorate – DED**): (a) the existence of a contractual relationship between the person depositing the money and the commercial company, (b) entry in the official books of the company of the deposit of money by partners, shareholders, etc., with the word "deposit" expressly stated and not "loan". The deposit or withdrawal of money must be evident only from this entry in the books and not from any other written contract or from the consideration of other facts, (c) the entry in the books must not relate to a contract, act or transaction that was previously subject to stamp duty or was legally exempt from it, (d) the deposit or withdrawal of money must be made without necessarily mentioning the reason for the deposit or withdrawal, unless the taxpayer proves that the entry in the books relates to a contract, act or transaction, had previously been subject to stamp duty or had been legally exempted from it.

It should be noted that the condition under (b) is indicative of the importance that the tax authority attaches to the accounting representation of the transaction in order to impose the relevant duty. Indicatively, in decision **DED 225/2020** (issued under the previous regime), it was ruled that the entry "against account" instead of the explicit mention of "loan" in accounts kept between affiliated companies reinforces the conclusion that "... *the movements of these accounts include only financial facilities between companies ... subject to stamp duty of 1.2%*", as deposits/withdrawals.

Therefore, to the extent that the existence of a loan agreement or the possibility of including the audited deposits/withdrawals in the context of a current loan account, within the meaning of the law, could not be proven, the tax authority imposed, under the above conditions, a stamp duty calculated on the amount deposited or withdrawn, as recorded in the relevant entry in the books. Indeed, under the previous regime, the tax authority concluded that both contracting parties were liable to the State for the payment of the stamp duty (see decision **DED 407/2020**). **Law 5177/2025 already stipulates that the digital transaction fee is calculated on the basis of the amount deposited or withdrawn, as recorded in the relevant entry in the books, while specifying that the legal person or legal entity whose cash assets are the subject of deposits or withdrawals is solely liable for paying it.**

The imposition of a digital transaction fee in the case of a current account:

The imposition of a stamp duty on a current account presupposed the existence of a loan account, i.e. an account containing only monetary credit transactions, i.e. monetary transactions from loans and deposits of money. On the contrary, an account that contained commercial transactions, such as, for example, transactions from the sale of goods on credit, from cash advances for future sales, etc., known as a "simple" current account, was not subject to stamp duty.

The new law (Article 8 § 2) it was clarified that a current account is defined as a contract between two contracting parties, one of which is engaged in business activity, which provides that in the series of transactions between them, mutual credits and debits will be deposited in a single account. The law clarifies, in accordance with the provisions in force in the context of stamp duty, that the PSF is levied on the loan current account

or mutual settlement account, to the exclusion of the simple account.

Despite the definition of a current settlement account provided by the new law, certain ambiguities remain that had arisen in the context of stamp duty regarding its necessary content. In the published DEDs, there is controversy as to whether a current account is required to show not only debits and credits but also successive debit or credit balances during the financial year due to the contribution of more than one transaction.

Thus, in the context of Decision **DED 1458/2020**, it was ruled that an account in which three transactions were made (two debits totalling €295,000.00 and one credit of €240,000.00) as a result of which its balance remained unchanged, i.e. **there was no change in the balance from debit to credit during the same financial year**, in accordance with the above, **cannot be classified as a loan agreement**. Therefore, each debit transaction was considered independent and subject to a stamp duty of 1% in accordance with the provision of the fourth subparagraph of paragraph 5(c) of Article 15 of the Stamp Duty Code, as a simple deposit of money.

On the other hand, other administrative decisions state that **it is not necessary for the current account to be changed at least once during the financial year from debit to credit or vice versa from credit to debit in order to be classified as a current account, but it is sufficient for it to show continuous movement of deposits and withdrawals, even if its balance throughout the financial year remains debit or credit**. In this context, it is crucial that the contracting parties, at least one of which must be a trader, act as lender and debtor in turn for each transaction recorded in the account. Consequently, according to this reasoning, an account is not considered a current account if its content shows that one of the contracting parties is always a creditor and never a debtor (see

Decision 1774/2019).

Law 5177/2025 specifies that the PSF is calculated for each tax year on the higher amount of the debit or credit balance, as the case may be. For the calculation of the higher balance referred to in the previous paragraph, the transactions of the tax year in which they were carried out are taken into account, after deducting the debit or credit balance carried over to the account from the previous tax year, while interest arising therefrom is not taken into account.

Special cases of deposits/withdrawals:

"Conversion" of a current loan account into a simple deposit:

Under the previous regime, it had been repeatedly ruled in the context of DED decisions (see, for example, DED decisions 891/2020, 429/2020), that if the balance transferred to the current loan account remains unchanged until the end of the financial year – and this will happen if the account in question remains inactive throughout the financial year – then the above balance is subject to stamp duty as a simple deposit. If, however, the above balance, after being stamped as a simple deposit, is carried over as such to the following financial year and remains inactive again, it is also not subject to any stamp duty, because it has already been stamped as a simple deposit in the previous financial year.

Deposits of money against share capital increase:

Deposits of money by shareholders of a public limited company

or third parties for a future increase in its capital were not subject to stamp duty because the capital increase is subject to capital concentration tax. This is expressly provided for in Article 2(3)(d) of Law 5177/2025, which also excludes the imposition of stamp duty.

However, under the previous regime, it had been ruled that shareholder deposits in public limited companies for future capital increases were not subject to stamp duty, provided that they were capitalised within 12 months (see Decision 1620/2024 of the Administrative Court of Appeal). According to the relevant decision, if the issue of shares does not take place within the above deadline set by Article 26 of Law 4308/2014 (on Greek Accounting Standards), the deposits are subject to stamp duty as cash facilities. As has been ruled (see Decision 63/2019), the failure of depositors to withdraw the relevant amounts implies their tacit consent to the money remaining in the company for the purpose of cash facilities.

In conclusion:

Tax practice confirms that the correct documentation and accounting of a cash transaction is crucial to avoid interpretations that may result in tax burdens on the parties involved. The transition to the VAT system highlights the legislator's effort to "clarify the landscape" with regard to this specific indirect tax, thereby enhancing transaction security. It remains to be seen, through the practical application of the new framework, whether this objective will be achieved and whether the ambiguities that arose under the stamp duty regime will be removed.

THE WITHDRAWAL OF A PARTNER FROM A PRIVATE CAPITAL COMPANY (I.K.E.)

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June 2025

Private Capital Companies (IKEs), having now become prevalent in the small and medium-sized enterprise sector, play a leading role in the Greek economy. This article discusses how and when a partner can voluntarily and legally withdraw from this corporate entity and what claims they retain against the company in this case.

1. Introduction

More than a decade after the enactment of Law 4072/2012 and the introduction of the Private Capital Company (hereinafter referred to as I.K.E.) into the Greek legal system, this type of company has spread among small and medium-sized enterprises, which are the norm in the Greek market and economy. Often, precisely because of their size and the close relationships that develop, disputes and disagreements arise, which can make it unbearable for a partner to remain in the company.

The right of withdrawal ensures that a partner can be released from their corporate obligations and cease to be a member of the corporate structure, under the conditions set out in the law and/or the articles of association.

In the framework of the provisions of Law 4072/2012 concerning private limited companies, the right of withdrawal is provided for in Article 92(1), according to which: "Any partner may withdraw from the company **for good cause by decision of the court, issued upon his request.**"

However, partners are given the option to deviate from the provisions of the law by regulating the right of withdrawal in the articles of association, as paragraph 2(a) of the same article stipulates that: "The articles of association may include provisions on the right of partners to leave the company under certain conditions." Of course, partners are not entirely free when introducing such statutory provisions, as discussed in more detail below.

2. Withdrawal by court decision for good cause – The legal right to withdraw

The legislator has chosen to establish as a rule the judicial

exercise of the right to withdraw. As the law is currently formulated, three conditions must be met:

- **Application by the departing partner to the competent Court of First Instance.**
- **Existence of good cause.**
- **Issuance of a court decision pronouncing the exit.**

However, the question of what constitutes good cause is of greater practical importance. Good cause is a vague legal concept, which has a particularly broad meaning and is difficult to define. The competent court is responsible for determining whether good cause exists and for specifying it in each individual case.

It is accepted that good cause for withdrawal exists **when the continued presence of the partner who wishes to withdraw from the company becomes, for objective or subjective reasons and in view of good faith and transactional ethics, unbearable.**

The objective reasons will usually relate to circumstances concerning either the company itself or the relations between the partners, while indicative examples of such circumstances include **poor management of the company, the inability to achieve the company's purpose, inability to function due to the formation of two conflicting groups of partners, constant disputes and disagreements regarding the organisation and operation of the company, and even intense personal disagreements** (see EirSiteia 50/2014, EirVolos 245/2021, EirPatron 200/2024). On the other hand, subjective reasons will concern circumstances relating to the outgoing partner, **e.g. inability to fulfil corporate**

obligations due to long-term illness or absence, financial reasons.

Of course, the structure of the company will also be important for the ad hoc assessment of whether or not there is a valid reason, especially **if the personal or capital element prevails, i.e. depending on whether the IKE is more akin to a personal or capital company. The concept of good cause is also found, with similar significance, in the case of the exclusion of a partner from the IKE.**

Another issue that arises is when the important reason must exist. The important reason must exist both at the time of submission of the application and during its discussion.

In any case, the proposed important reason **must be permanent and particularly serious in order to justify the exit**, as the corporate duty of loyalty, which is accepted to apply to all partners and not only to managers, requires partners to endure "normal" difficulties, malfunctions or disputes for a reasonable period of time and not to make the right to withdraw the "easy solution", permanently jeopardising the corporate purpose.

Finally, withdrawal occurs with the issuance of a final decision by the court, which pronounces the withdrawal. Unlike the exclusion of a partner, where it is expressly provided that the exclusion of a partner occurs by final court decision, in the absence of such a specific provision for withdrawal, the prevailing view seems to be that a final decision is sufficient. In addition to the publication of the decision, it must also be registered with the General Commercial Registry (GEMI) in order for the change in the company's composition to be enforceable against third parties.

3. The right of withdrawal under the articles of association.

Beyond the legal right of withdrawal, the legislator provides the partners with the possibility to deviate and regulate the right of withdrawal from the company with a relevant provision in the articles of association.

In principle, it is not excluded that the right of withdrawal may be justified if certain reasons exist, which may relate both to the partners themselves, e.g. financial reasons, long-term illness and absence, and to the company itself, e.g. inability to achieve the company's purpose, constant disputes, lack of profitability.

The main difference between the legal right and the statutory right of withdrawal lies mainly in the fact that **the right provided for in the articles of association will, as a rule, be exercised extrajudicially. As a rule, it will be provided that it is exercised by unilateral declaration to the company, while it may be stipulated that a specific procedure must be followed for its lawful exercise, e.g. it must be served by a bailiff or by registered letter, a private or public document must be drawn up.** Upon delivery of the declaration to the company, the withdrawal is considered to have taken place, but the legal effects do not occur until the procedures provided for by law or the articles of association have been completed.

4. The relationship between the statutory right of withdrawal and the legal right

In any case, the partners are not completely free when they choose to regulate the right of withdrawal in the articles of association. Despite any provision for a statutory right of withdrawal, the legal right of withdrawal continues to exist, and the articles of association must not be used to create obstacles to its exercise. The restriction imposed is twofold. Firstly, a partner who wishes to withdraw from the company is free to choose between the statutory right and any right provided for in the articles of association. Any provision requiring the prior exercise of the statutory right in order to legally exercise the right provided by law is not considered lawful and has no effect.

The second restriction concerns the conditions imposed on the exercise of statutory rights. In fact, the legislator allows partners to introduce statutory provisions, pre-

In order to make the right of withdrawal subject to milder conditions and to facilitate withdrawal f

so that the right of withdrawal is subject to milder conditions and it becomes easier to leave the company. However, this does not mean that the partners can go to the other extreme and make it 'free', i.e. that a partner can leave the company simply by declaring so, without any conditions or restrictions, or with conditions that are purely formal. This is also supported by the wording of the law itself, as it explicitly states that it will be exercised under certain conditions.

5. The legal consequences of withdrawal

When a partner withdraws from the company, a liquidation relationship is created between the partner and the company. In particular, the withdrawal of the partner takes effect, in the case of a legal right, upon the issuance of the final decision and, in the case of a statutory right, upon the delivery of the declaration of intent to the company, and is completed, in accordance with the provisions of paragraph 4 of Article 92 of Law 4072/2012, with the cancellation of the company shares and the reduction of the company capital, if required, i.e. in cases where a partner with a capital contribution withdraws. However, it is also possible to stipulate in the articles of association that, instead of cancelling the company shares, they will be repurchased by a person designated by the company.

The departing partner has the right to request

payment of the full value of his company shares, which is determined by the court if the parties do not agree or if the method of determination is not provided for in the articles of association. The decisive time for determining the value of the outgoing partner's share is the time of discussion of the application (see EirPat 200/2024). In other words, the articles of association may stipulate that the actual or book value of the company shares will be paid, that a percentage of the company share will be paid, or that an expert appraisal will be carried out to determine the value.

Finally, issues may arise regarding the completion of the partner's exit if the departing partner has not fully paid their entire contribution to the company. This issue is of interest in cases where partners with non-capital or guarantee contributions withdraw. Specifically, in the case of a non-capital contribution that has not been paid in full, the company is entitled to compensation, which will consist of the payment of an amount equal to the unfulfilled contribution. In the case of a guarantee contribution that has not been fully provided at the time of withdrawal, no claim for compensation is established, but the departing partner continues to be liable for three years from the registration of the departure in the General Commercial Registry (GEMI) for debts incurred prior to his departure.

Finally, under certain conditions, the exercise of the right of withdrawal may be deemed abusive.

THE NEW TAX FRAMEWORK FOR COMPANY TRANSFORMATIONS AFTER LAW 5162/2024

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Law 4601/2019 consolidated for the first time in Greece the rules governing the corporate framework for transformations, but maintained the fragmentation of the provisions providing for the relevant tax incentives. Recently, the provisions of Articles 47-59 of Law 5162/2024 attempted for the first time to consolidate the tax provisions and incentives governing corporate transformations.

1. Introduction

Corporate transformations are an extremely important area for any modern economy, as they lead to the creation of larger and more robust economic entities. At the same time, they are an important area of convergence for many branches of law, such as corporate, tax, accounting, labour law, etc.

A few years ago, Law 4601/2019 consolidated into a single piece of legislation the previously scattered provisions of corporate law governing transformations. However, Article 4 of Law 4601/2019 maintained the tax incentive regime that had been in force until then, namely the provisions of Legislative Decree 1297/1972, Laws 2166/1993, 4172/2013 and other laws, particularly those relating to taxation or development.

With the recent Law 5162/2024 (Articles 47-59), the above provisions are repealed and the tax incentive regime for transformations is consolidated for the first time in a single piece of legislation, while the provisions of Law 4935/2022 remain in force. In this article, we briefly examine the tax incentives for transformations, as consolidated under Law 5162/2024.

It should be noted that the new law **applies to mergers, demergers and conversions, provided that the draft merger agreement, the draft demerger agreement or the draft decision of the general meeting or the partners for the conversion, respectively, are published after the entry into force of Law 5162/2024, i.e. after 5 December 2024.** On the contrary, transformations carried out on the basis of the repealed provisions continue to be governed by them in terms of the terms, conditions and tax benefits provided for therein.

2. The scope of application of the provisions of Law 5162/2024

Firstly, it should be noted that the tax incentives provided for in the provisions of Law 5162/2024

apply to any form of corporate transformation provided for in Law 4601/2019, but also in the case of exchange of corporate participations, provided that:

- **Only domestic companies** that are tax residents in Greece and are subject to the same tax regime (i.e. the provisions of the Income Tax Code - ITC) **may participate in the transformation.**

- **At least one domestic company** with tax residence in Greece **must participate** when the other companies have **tax residence in an EU Member State, have one of the forms provided for in Part A of Annex I to Directive 2009/133/ EC** (or the form of an IKE under Law 4072/2012) and **are subject to one of the taxes referred to in Part B of the above Annex.**

- Specifically, in cases of branch contribution or exchange of shares, at least one domestic company with tax residence in Greece participates when the other companies have tax residence in an EU Member State, have one of the forms provided for in Part A of Annex I to Directive 2009/133/ EC (or the form of an IKE under Law 4072/2012) and are subject to one of the taxes referred to in Part B of the above Annex.

- Finally, it is expressly provided that the relevant provisions of Law 5162/2024 **also apply in the case** of a contribution of a sole proprietorship or joint venture under Article 293(2) of Law 4072/2012 to an existing or new company from those that may participate in a transformation under the provisions of Law 4601/2019 (as under current law, the transformation of a sole proprietorship into one of the above corporate forms is not permitted).

It is clarified, however, that there is no restriction as to whether the transformation leads to a higher or lower legal form, as was the case under the previous regime. Consequently, the regulatory scope of the proposed provisions includes, for example

the merger by absorption of a public limited company by a general partnership, as well as the conver

the merger by absorption of a public limited company by a general partnership, as well as the conversion of a public limited company into a private capital company.

3. The specific tax incentives for transformations

● The rules for the valuation of assets

Article 49 of Law 5162/2024 provides that a merger, division or conversion does not increase the taxable value of the assets contributed to the receiving company. Consequently, **even if, under the provisions of company law, the assets of the transferring company are required to be valued, this valuation does not affect the taxable value that the assets will now have in the recipient company. In practice, this means that taxation is deferred until the asset is transferred** (because in this case, the acquisition price will be the taxable value which, according to the above, is the value recognised for the same asset in the transferring company).

● The rules for the valuation of company shares

The same provision stipulates that **the value of the company shares acquired by the shareholder or partner of the contributing or converting company shall be that resulting from their valuation at market value at the time of completion of the transformation, provided, however, that the shareholder/partner does not transfer these holdings within two years of the completion of the transformation.** Consequently, under this condition, **the shareholder/partner is definitively exempt from taxation on the value of the company shares acquired in the recipient company.** As stated in the explanatory memorandum to the article: *"Therefore, the shareholder or partner is definitively exempt from taxation on the capital gains arising from the transformation and incorporated into the value of the company shares received in exchange."* Conversely, **if the company shares are transferred within two years, their acquisition price is considered to be their value prior to the transformation.**

The above also applies to the value of the company shares

shares of the recipient (beneficiary) company received by the contributing (split) company in the context of a branch spin-off. In other words, the contributing company is definitively exempt from taxation on the value of the shares in the recipient company that it acquires, provided that it does not transfer them within two years of the completion of the spin-off.

However, this does not apply the same applies to the taxable value of the company shares held by the shareholder or partner of the acquired company **in the context of an exchange of company shares**, in which case the value of the exchanged company shares prior to the exchange is taken into account.

● The rules for the taxation of goodwill

Based on the provisions of Article 50 of Law 5162/2024, the goodwill arising from the corporate transformation does not entail a tax liability for the recipient company. As stated in the explanatory memorandum, *"this exemption is conditional upon and achieved by the provision that the recipient company continues to maintain, for tax purposes, the same value (it does not attribute a value greater than that) that the transferred assets had in the hands of the contributing company prior to the transformation."* Consequently, **as long as the exact same value of assets is maintained in the books of both the transferring and the receiving companies, no capital gains arise from a tax perspective.**

Thus, as clearly stated in the explanatory memorandum: *'The transferee company will be taxed in the future on the assets transferred to it when a taxable event occurs in accordance with the general provisions of the Income Tax Code, such as, for example, when the recipient sells an asset that was transferred to it by the contributor in the context of the merger or division. In other words, the recipient's tax liability is deferred,* while it is specified that Article 47(1) of the Income Tax Code does not apply.

Similarly, it is provided that the shareholder/partner of the transferring company is not subject to tax on the capital gains arising from the corporate transformation, with the sole exception of the portion corresponding to a cash payment. **This exemption from income tax for the shareholder/partner is definitive, but is linked to the retention of shareholder status, as mentioned above.**

The above also applies to the contributing company.

Company in the case of a spin-off, but also to the shareholder/partner of the acquired company in th

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company in the case of a spin-off, but also to the shareholder/partner of the acquired company in the case of an exchange of company shares.

● The rules for depreciation

According to paragraph 1 of Article 51 of Law 5162/2024, **the receiving company depreciates the assets based on the corresponding taxable values of these assets in the contributing company and in accordance with the rules that would apply to it if the transformation had not taken place.** The provision of the law refers to tax depreciation. This is reasonable, given that, as mentioned above, the assets are recorded in the books of the recipient at the value they had in the books of the contributing company.

● The rules for the transfer of losses, provisions and reserves

Furthermore, paragraphs 2 and 3 of Article 51 provide for the possibility for the recipient company to carry forward the losses of the transferring company under the same conditions that would apply to the transferring company if the transformation had not taken place, as well as the reserves and provisions formed by the transferring company, with the tax exemptions and conditions that would apply to the transferring company.

The provisions use the terms "transferee" and "transferor", as in the case of conversion, since it concerns the same legal entity, no special provision is required. **Furthermore, with regard to the transferee's right to carry forward losses, it is understood that this is not affected, as the transferee is not being converted.**

4. Other exemptions under Law 5162/2024

The provisions of paragraph 1 of Article 56 of Law 5162/2024 provide for exemption from any tax or fee payable to the State, contribution or right in favour of a third party of the contracts and acts of transformation, the agreement concerning the contribution or transfer of assets, the company shares to be issued, the decisions of the competent bodies, the relationship of participation in the capital, the acts of publication in the General Commercial Registry, the transcription of the acts (except for the fixed rights of registrars or heads of land registry offices), as well as

any other agreement and act required for the transformation or establishment of a company, within the framework of the corporate transformation process.

5. In particular, the contribution of a sole proprietorship or joint venture under Article 293(2) of Law 4072/2012

Article 52 of Law 5162/2024 clarifies that the tax provisions of Articles 49-51 of the above law also apply in the case of the contribution of a sole proprietorship or joint venture to an existing or new company, subject to the following conditions:

– Firstly, assets are defined as those belonging to the natural person who is the owner of the sole proprietorship or to the members of the joint venture and which serve the purposes of the business or joint venture.

– The sole proprietorship or joint venture **must have commenced operations at least two years prior to the date of the contribution.**

– In order to be exempt from real estate transfer tax (FMA), the transferred properties must: a) have been used for the needs of the contributor for at least two (2) years prior to the contribution, and b) be used for the needs of the recipient for at least two (2) years from the date of contribution. However, these conditions do not need to be met in the case of real estate contributed by a sole proprietorship or joint venture whose main activity is the construction or exploitation of real estate.

6. In conclusion

About five years ago, we wrote the following from the same position: "[...] *in contrast to the consistency and clarity now evident in the institutional framework regarding the conditions and procedure for implementing transformations (i.e. Law 4601/2019), the tax incentives provided are reflected in several pieces of legislation, each of which sets its own conditions for granting the incentives.*" Today, it appears that this objective has now been achieved, with the consolidation of the provisions providing for the relevant incentives (with the exception, however, of the provisions of Law 4935/2022) and the provision of a more structured framework of tax incentives for corporate transformations that already play a primary role in the Greek market and economy.

DUE DILIGENCE IN BUSINESS ACQUISITIONS

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In previous articles, we discussed non-disclosure agreements (NDAs) and memoranda of understanding (MOUs) in business acquisitions. Today, we will examine the next stage in the acquisition process, which is the pre-contractual audit of the company (due diligence).

Due diligence ("DD") is one of the most important stages of the entire process. **It is where the prospective buyer gets to know better what they intend to buy, learns about potential problems, defects, weaknesses, etc.** DD usually follows the signing of the MOU and lasts, in most cases, from 1-6 months, depending, of course, on the volume of data and the size of the team that will undertake it.

DD mainly involves checking a) corporate documents (documents relating to the company's formation, representation and management), b) affiliated companies, c) customer base, d) branches, e) lawsuits and the existence of possible disputes, f) the amount and changes in share capital, g) the financial situation of the company (real estate, equipment, cash, etc.), h) intellectual property rights, i) credit agreements, j) collateral (pledges, promissory notes, mortgages, etc.), k) tax and insurance compliance, l) contracts, m) labour relations, etc.

The results of the DD are important for two reasons:

1. Firstly, they largely determine the price. If problems are identified during the audit, the proposed price may be reduced or made subject to conditions, etc. Secondly, they determine the price to a large extent. If problems are identified during the audit, then the price may be reduced or made contingent on certain conditions, etc. (see No. 493/2021 TrEphA, Qualex: **"For this reason, in order to determine the purchase price of the shares, they conducted, through the company ..., a pre-contractual financial audit (due diligence) to ascertain the financial situation of the company**

*they were going to acquire. Consequently, the value of the shares purchased was determined on the basis of the audit carried out in March 2001 by the above auditing company, which recorded both the current assets and the total liabilities of the transferred company to suppliers, creditors, tax liabilities and liabilities to insurance organisations"; see also 344/2021 MEFath, Qualex: "However, according to the audit firm's observation, the value of the inventories **was not confirmed, the parties, with regard to this amount, expressed the following reservation and made the final price dependent on its full finalisation within a period of 20 days."***

2. Secondly, they shape the contractual terms of the SPA (share purchase agreement) as the buyer's fears, stemming from the findings of the DD, are translated into an attempt to transfer risks to the seller through contractual terms in the sale agreement.

DD also determines, to a large extent, the seller's liability after the acquisition is completed. **This is because the buyer's knowledge of possible defects in the business prior to its sale results in the seller being released from any liability.** This is logical in principle: you cannot, knowing about the problem, come after the transaction and point it out in order to reduce the price or claim compensation. **If you knowingly purchase a defective business, you assume the relevant risk and obviously have 'passed on' the defect in question in the agreed price.** For this reason, the seller usually gives the buyer a "disclosure letter" listing all the documents that have been disclosed to the seller, or it is agreed that all documents posted in the Virtual Data Room are considered to have been disclosed.

disclosed to the buyer and that the latter is aware of their content (Disclosure Letter - see, for example, No. 6285/2013 PPraAth, Qualex: *"In addition to the above-mentioned general knowledge of the plaintiff regarding the inaccuracy of the balance sheet concerning the plaintiff's overall financial situation, it was proven that the plaintiff's joint venture, despite conducting the legal and financial audit under time pressure, had been informed of the existence of its counterparty's debt to the Dutch Company and was aware that the balance sheet was inaccurate with regard to the specific Claim"* - see also No. 6119/2011 PPraAth, LAW: *"However, until the signing of the share purchase agreement on 11/10/2001, the licensor of the first of the defendants in case no. 3, the Consortium of Companies/. was acting aware of the actual situation both in relation to the dire financial situation of the company.....", as reflected in the published balance sheets of ".....", as well as regarding the regarding the execution of the programme contracts with/. given that, on the one hand the data room verification process (verification period) took place, in which it participated, represented by specialised financial advisors of auditing Company "....." and from legal advisors of ".....", namely and, and on the other hand, received information from the joint partners of ".....", as the first defendant herself admits...").*

Furthermore, in the context of a share purchase agreement (SPA), there are various contractual arrangements to reflect the parties' intentions in relation to the DD performed:

A. It is possible to agree that the DD has no bearing on the seller's liability. In other words, even if the buyer becomes aware of certain defects in the business through the DD, the seller will still be liable if they promised a flawless transaction (the "pro-sandbagging" clause).

business without defects (pro-sandbagging clause). This clause aims to protect the buyer from, for example, the provision of last-minute documents, for which there is no time to process, or from the inability to calculate the impact of certain issues on the financial agreement (and therefore this issue is referred to be decided at a later date in terms of compensation).

B. It is possible to agree that in order for the seller to be released from any liability, the buyer must have been made aware of the problem in a specific manner. In other words, a defect should not be inferred from a document that the buyer has read, for example, but should be directly apparent from it. Often, the prospective buyer and his advisors are faced with a large number of documents, contracts, financial statements, etc. Each document, or even the absence of a specific document/contract, may give rise to an assumption; e.g. a contract with a supplier of the acquired company may have been disclosed, but it may contain an invalid term which could give rise to a claim for compensation against the company. **If this claim is ultimately pursued after the acquisition, it is questionable whether the seller can base its exemption from liability on the fact that the buyer was aware of the specific contract.** Usually, the parties will formulate the respective terms so that the seller is exempt from any liability only if the issue that has arisen arises **directly and immediately from the notified document**; i.e. in our case, notification of the contract would not be sufficient, but some form of extrajudicial statement or lawsuit by the supplier would also have to be notified.

In conclusion, the ultimate purpose of DD is to give the buyer the best possible picture of the material and serious problems that may arise and to assist, on the one hand, in determining the sale price and, and on the other hand, to allocate liability between the parties when the time comes to draw up the share purchase agreement (SPA).

EXEMPTION OF LEGAL REPRESENTATIVES FROM DEBTS TO THE STATE

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It is well known to all entrepreneurs that the position of Chief Executive Officer is one of responsibility not only to the company's shareholders but also to the State and the EFKA (Unified Social Security Organisation). For a variety of taxes and insurance contributions, the CEO of a public limited company is held accountable and liable with his or her personal assets. However, this may discourage executives from taking on the management of a company facing financial difficulties. For this reason, in 2020, the legislator passed a provision which, for the first time, introduced the exemption of representatives from the debts of insolvent companies to the State and the Social Security Fund: Article 195 of the New Bankruptcy Code (Law 4738/2020). According to the explanatory memorandum to the law, this decision was prompted, among other things, by the finding that the personal liability of representatives of legal entities in the event of the latter's bankruptcy acts as a deterrent to entrepreneurship, while also deterring competent managers from taking on the management of companies in financial difficulty.

Based on this provision, the representative of each joint liability company is exempt (36 months after filing for bankruptcy or 24 months after the declaration of bankruptcy) the representative in question is exempt from any joint and several liability for debts owed to the State and EFKA (Social Security Fund) by the public limited company that arose 3-5 years prior to the bankruptcy (the duration depends on the time when the company ceased its payments). The representative loses the exemption if, within the period of 24/36 months, an appeal is successfully lodged by anyone with a legal interest against the exemption. Regarding this provision, we note the following:

- 1. The CEO has every reason not to risk delaying the filing of the bankruptcy petition.** This is because if there is a disproportionate delay, the debts may be carried over to periods beyond five years, where the exemption cannot be extended.
- 2.** The taxes for which the CEO is jointly and severally liable and for which he may be exempted under Article 195 are mainly the following: income tax, withholding taxes (e.g. FMY), attributable taxes, VAT and ENFIA.
- 3.** Equally important, however, is the following: **the beneficial effects of the exemption also extend to the criminal aspect of the case.** According to the relevant Ministerial Decision (44510 EX 2021), the debts to which the exemption applies are not taken into account for the prosecution of the representative for the offence of non-payment of debts to the State.

4. The only case in which the legal representative will not be exempted is if an appeal is lodged by the AADE or e-EFKA and this appeal is accepted. The court will mainly examine the good faith of the legal representative. In order to be considered to be acting in good faith, the CEO must **a)** have demonstrated good faith, both at the time of the declaration of bankruptcy and during the bankruptcy proceedings, **b)** have cooperated and continue to cooperate with the bankruptcy authorities, **c)** not be burdened with acts or omissions that caused or delayed the bankruptcy, and **d)** the bankruptcy not be due to his fraudulent actions.

5. What is even more interesting is that this provision also applies to old bankruptcies. Specifically, for bankruptcies declared before 1 July 2021, the discharge of the representatives of the bankrupt companies will take place on 1 January 2022, unless an appeal is lodged by the State/EFKA by 31 December 2021. For example, the Attica KEBIS recently issued a debt certificate, which shows the **discharge of the representative of the bankrupt SA from debts totalling €992,880.91 from joint liability**, taking into account that he was the representative of a legal entity that went bankrupt in 2013 and the debts to the State relate to the years 2010-2012. Specifically, the certificate stated the following: *"In particular, the taxpayer is exempt from debts relating to the 36-month period prior to the suspect period, namely from 26/7/2009 to 26/07/2012."*

6. Finally, a recent example is the following: a few months ago, No. 252/2025 was published.

decision of the Athens Multi-Member Court of First Instance. The latter declared a public limited company providing human resources services bankrupt for debts to the State and EFKA exceeding €5,000,000. The court accepted that the applicant company's cessation of payments was due to a "commercial accident" and unsuccessful business choices. According to the assumptions of the decision, the applicant made an effort to prevent the cessation of payments, such as submitting an application to the out-of-court debt settlement mechanism, but due to the obligation to retain almost 250 employees

in order to remain competitive, it was impossible for it to meet its obligations (in particular to the Social Security Fund and the State). Therefore, according to the disputed Article 195, **the legal representative of the company filing for bankruptcy, who is jointly and severally liable for the debts to the State and EFKA, will be released from the latter when, in this case, 24 months have elapsed since the declaration of bankruptcy and no successful appeal against the discharge has been lodged in the meantime by the State or EFKA.**

LIQUIDATION OF ASSETS IN BANKRUPTCY: THE EXCEPTION - SALE OF THE BUSINESS AS A WHOLE OR AS OPERATING UNITS

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This article examines the process of selling individual assets in the context of bankruptcy, as provided for in Law 4738/2020, with an emphasis on deviations from the Code of Civil Procedure and the legislative aim of accelerating liquidation in favour of creditors.

I. The concept of the enterprise as a whole and its functional units.

The liquidation of the bankrupt's assets takes place on the initiative of the trustee through the sale of individual assets. The assets are put up for electronic auction on the e-auction website. The Insolvency Code ("IC") outlines the entire sale process, which largely "mirrors" that of the Code of Civil Procedure, but adapted to the specificities of bankruptcy.

As an exception to the above rule, the Insolvency Code introduced the possibility of a total sale of the business or its operational units. This procedure is preferred when the business retains a unified or separable productive capacity, allowing its value to be transferred as an operating unit, despite the bankruptcy of its owner. This option is only available when a business exists and is not subject to the provisions on small-scale bankruptcy.

Thus, when, at the request of bankruptcy creditors representing at least 30% of the total debts and including at least 20% of secured creditors, the court may be asked to *order the "sale of the entire business or its individual operating units"*. This request is submitted both when the proceedings are initiated by the creditors and as an additional intervention in the context of an application submitted by the debtor. If the request is accepted by the court, the trustee is obliged to proceed with the sale in the manner ordered. It is, of course, possible to order a mixed sale, combining the total sale and the sale of individual assets. In the absence of a relevant provision in the law, the relevant provisions must be applied in combination, which presents practical difficulties. It should be noted that this provision of the decision constitutes a separate chapter, which may be challenged.

chapter, which may be challenged.

The concept of a business as a whole is largely borrowed by the K.A.F. from the corresponding provisions of Law 4307/2014 on special liquidation, with the difference that under the K.A.F. only the assets are transferred. Thus, an enterprise as a whole is understood to mean all the assets listed in the company's latest balance sheet approved by the General Meeting and any other assets and rights not listed in the balance sheet, including claims of any kind, trademarks, patent rights and trade names, clientele, reputation, administrative licences, etc.

Similarly, the concept of individual operating units is identical to that of a branch, i.e. the totality of assets, exclusively in the case of bankruptcy, which constitute an autonomous operation from an organisational point of view. The property complex is transferred free of encumbrances and together with the pending contracts relating to it, unless the trustee chooses to sell a contractual relationship separately. The trustee will choose which assets of the business, including claims, will be sold together with an operational unit or separately.

II. On the procedure

The disposal programme, i.e. both the order of disposal and the specific details of each sector or individual assets, unless determined by the Court, are defined by the trustee and approved by the Creditors' Meeting. The sale takes place through a public electronic auction conducted before a notary electronically via e-auction, a provision that constitutes an innovation of the K.A.F. in relation to the previous law. Contrary to the private appraisal procedure and the auction procedure under the Code of Civil Procedure, it does not take into account

appraisal takes place and no initial bid price is set. The bid of the highest bidder is submitted by the trustee within one month of the completion of the auction for approval by the Assembly of Creditors, which may approve it as is or on condition that the offered price is increased. If the procedure is completed successfully, the transfer of the business or the individual operating unit to the highest bidder follows, with the signing of a contract between the latter and the trustee and payment of the price in cash. The contract, as expressly stated in Article 160 of the Code of Civil Procedure, has the force of a final award.

Conversely, if the auction is unsuccessful, either because no bids were submitted or because the transaction was rejected by the Assembly, the sale procedure is terminated and the trustee proceeds with the sale of the individual assets as above. Of course, instead of rejecting the bid, the Assembly may decide to hold a new auction within 18 months. The auction may also be partially successful, with the transfer of only some operational units being completed (or with a decision to hold a new auction for them) and failure in respect of others, which will ultimately be sold through the private sale procedure.

The process is completed 18 months after the declaration of bankruptcy, provided that no bidding process is pending and no decision has been taken by the Assembly to extend it. After completion, the trustee proceeds with the sale of the individual assets.

In order to ensure the success of the overall sale, the K.A.F. also includes supporting provisions that deviate from those applicable in the context of individual sales. In this context, the commitment of secured creditors to suspend individual prosecutions, without any time limits, is considered important. A special regime is also introduced for ongoing contracts, so that the rule of automatic and uncompensated termination does not apply, unless there is a specific provision to that effect in the law. The combination of the provisions of Articles 107 and 171(5) implies that

that any contractual provision for termination of the contract in the event of bankruptcy is null and void by law, unless it is not detrimental to the bankrupt debtor. The trustee is also given the option of concluding contracts for the performance of the current activities of the bankruptcy, which, of course, may be terminated by the Creditors' Meeting within 30 days. It should be noted that the business is also protected at the administrative level, as it is expressly stated that bankruptcy does not constitute grounds for revoking administrative licences, while the tax relief provided for under the previous Bankruptcy Code and Law 4307/2014 is extended.

Finally, of particular interest is the absence of the possibility of challenging enforcement actions, which concerns both the method of liquidation discussed here and the sale of assets on an individual basis. If this legislative gap is unintentional, then the best solution seems to be the appeal under Article 933 of the Code of Civil Procedure, adapted to the bankruptcy procedure. The Bankruptcy Code only provides for the possibility of challenging the ranking table drawn up by the trustee, and in the context of this challenge, the reasons against the table of verified claims are also put forward.

III. In conclusion

The K.A. provides for this special procedure of total liquidation, so that the trustee is aware of the subsequent course of action as soon as bankruptcy is declared. It is not left to the bankruptcy authorities to decide at their discretion whether individual or total liquidation is appropriate in the case in question, as they are bound by the court decision. The K.A.F. attempts to mitigate the resulting lack of flexibility with provisions for auction failure. The rescue of a business without the rescue of its owner is a more complex scheme than the liquidation of individual assets, which must be governed by more specific legislation. Thus, K. Af. structures the process in such a way as to serve both the necessary speed and the rescue of the company's goodwill, while maintaining the validity of ongoing contracts, administrative licences, etc. in order to achieve the maximum possible auction price.

FOR WHICH DEBTS IS THE DEBTOR NOT RELEASED AFTER BANKRUPTCY DISCHARGE?

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In this article, we will examine which debts appear to constitute an exception to the rule of bankruptcy discharge. In other words, which debts are not discharged even after three years (or, under certain conditions, one year in the case of bankruptcy) from the declaration of bankruptcy or the registration of their name, not declared bankrupt, as a debtor in the electronic solvency register (EER).

1. Introduction

As we have mentioned in another article, one of the main pillars of the new bankruptcy law is the discharge of natural persons from their debts. This discharge is provided for in Articles 192 et seq. of Law 4738/2020, and on this basis, a natural person debtor is fully discharged from any debt to bankruptcy creditors, regardless of whether they have been declared or not, thirty-six (36) months (or under certain conditions within one year) from the date of the declaration of bankruptcy or the registration of their name in the electronic solvency register (EER), unless an appeal is lodged within the above time limit by any person with a legal interest against the discharge. At the same time, under the same conditions, Article 195 of Law 4738/2020 also provides for the discharge of the representative of a legal entity from any liability for the debts of the debtor legal entity. This essentially provides a second chance to over-indebted natural persons, as well as an incentive to work and rebuild their assets. However, Article 194 of the same law provides for certain cases that are not covered by the above exemption, which we will discuss below.

2. Debts excluded from the exemption:

Therefore, based on the above, the discharge is **automatically granted, in principle**, for all debts of the insolvent debtor. This means that the discharge is granted without any action being required on the part of the debtor, such as an application to the bankruptcy court or the issuance of a relevant decision. In practice, of course, an application is usually submitted by the insolvent debtor for the issuance of a declaratory act of discharge by the competent bankruptcy court (see Article 192 of Law 4738/2020), which act may then be communicated to the insolvent party.

(see Article 192 of Law 4738/2020), which the insolvent debtor can then notify to his bankruptcy creditors so that they are aware of the discharge, which has already taken effect automatically, and do not seek further collection of the claims from which the insolvent debtor has already been discharged.

However, according to paragraph 1 of Article 194 of Law 4738/2020, which applies automatically, without the need for an appeal or decision by the bankruptcy court, the bankrupt person is not discharged from:

a) Debts incurred after the filing of the bankruptcy petition. In the case of debts to the State, the decisive time is the time to which the obligation relates and not the time of creation of the legal title, as it is not excluded that a tax audit may be delayed or take a long time.

b) Debts arising from fraud or gross negligence that caused death or bodily harm to a person. These debts include compensation, even for moral damage or mental anguish, related to the death or bodily harm of a person.

c) Debts arising from offences under Law 4557/2018 (A' 139) on the prevention and suppression of money laundering and terrorist financing, except for the offence of non-payment of debts to the State.

Article 4 of the above law provides an extensive list of the basic offences covered by its provisions. Thus, referring to this article, we could mention certain debts which, due to the reference of the bankruptcy law to the above law, are excluded from bankruptcy.

PHowever, the above provisions do not apply to debts arising from the sale of real estate.

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tax exemption. Such debts could be, for example, those incurred by the bankrupt person as a result of acts such as: the formation of or participation in a criminal organisation (Article 187 of the Penal Code), terrorist acts (Articles 187A and 187B of the Penal Code and Articles 32 to 35 of Law 4689/2020), bribery and corruption of politicians and judicial officials (Articles 159, 159A, 237 of the Penal Code), bribery and corruption of civil servants (Articles 235, 236 of the Penal Code), influence peddling and bribery, bribery in the private sector (Articles 237A, 396 of the Penal Code) or bribery - accepting bribes to alter the outcome of a competition (Article 132 of Law 2725/1999), crimes against telecommunications (as referred to in Article 4 of Law 4557/2018), computer fraud (Article 386A of the Penal Code), smuggling (Article 174 of Law 5222/2025), stock market crimes (Articles 28-31 of Law 4443/2016), theft (Article 372 of the Penal Code), embezzlement (Article 375 of the Penal Code), robbery (Article 380 of the Penal Code), **tax evasion** (Article 79 of Law 5104/2024), and other offences referred to in Article 4 of Law 4557/2018.

It should be noted that Article 194 of Law 4738/2020 **expressly excludes the offence of non-payment of debts to the State**, which, is referred to as a basic offence in paragraph k of Article 4 of Law 4557/2018 on the prevention and suppression of money laundering, but this case is expressly excluded by the bankruptcy legislator in the context of the examined Article 194. Thus, after the bankruptcy discharge, the bankrupt debtor is not required to pay to the State the debts that have arisen against him in the context of the offence of non-payment of debts to the State, provided, of course, that these debts are not related to debts arising from the commission of another offence, such as tax evasion, for which he is not exempted as above. It should also be noted, as already mentioned above, that in the case of non-payment of debts to the State, the decisive time for the creation of the debt is the time to which the obligation relates and not the time of creation of the legal title.

At this point, it is worth making a special reference to the problem arising from the reference in Article 194 of the new Bankruptcy Law to the offences referred to in the aforementioned Law 4557/2018 on the prevention and suppression of money laundering

activities, and in particular in the case of (ka) of Article 4 thereof. Paragraph (ka) of Article 4 of Law 4557/2018 stipulates that a basic offence falling within the regulatory scope of this law, from which, that is, proceeds may arise for which the offence of money laundering will subsequently be committed, is "any other crime punishable by imprisonment of at least three (3) months, from which a financial benefit is derived". In this way, the legislator further expands the already extensive list of offences that could constitute predicate offences for the crime of money laundering. Due to the reference made by the bankruptcy legislator to the offences under this law, it could be said that the bankrupt person is not exempt from debts arising from criminal offences, even of a misdemeanour nature, if the minimum prison sentence for the offence exceeds three months.

d) Maintenance debts. This category includes debts that may have arisen against the bankrupt person in the context of a civil family law dispute, such as cases of maintenance for a separated spouse under Article 1391-2 of the Civil Code, post-marital maintenance under Article 1442 et seq. of the Civil Code, maintenance for minor and adult children under Article 1485 et seq. of the Civil Code.

3. Any dispute regarding the discharge of a specific debt:

The above exceptions to the exemption of the insolvent debtor, under the conditions set out above, and as already mentioned, apply, in principle, automatically. In other words, no appeal or court decision is required in order for the debtor to remain liable for the debts in question. However, if a matter is brought before the courts, such as, for example, if it is disputed in a particular case whether bodily harm to a person was caused by intent or gross negligence, then that dispute will be resolved by the competent court in accordance with the procedure laid down for the resolution of disputes concerning

dispute from which the debt arose, and not by the bankruptcy court.

With regard to all the above cases of criminal offences, which give rise to debts for which the bankrupt person is not finally exempted under the article in question, we note that there must have been an irrevocable criminal conviction of the bankrupt for the offence from which the debt arose.

Therefore, based on the above, if we assume that there is a debt arising from tax evasion and an individual notice of default has been issued for it, the insolvent debtor may file an objection against the individual notice, claiming that he has been discharged due to bankruptcy. In this case, the administrative court will rule that the debt in question is not covered by the bankruptcy exemption, as it falls under the exceptions of Article 194. There may even be further delays in the proceedings before the administrative courts if there are parallel criminal proceedings in respect of the alleged basic offence.

4. In conclusion

To summarise the above, it should be noted that in most cases, the debts for which the insolvent debtor is not exempt, even after three years have elapsed since his bankruptcy or the registration of his name in the Electronic Solvency Register, are either debts relating to the period after the filing of the bankruptcy petition or the living expenses of members of his immediate family, or debts which the bankrupt himself has incurred through fraud or gross negligence, such as in the case of a criminal offence (misdemeanour or felony) from which a civil debt arises. Therefore, it could be said that it is reasonable for these specific debts not to be covered by the bankruptcy discharge, while the rest, which were not caused by his fault, no longer burden him, so that he is given a real second chance to develop healthy business activity and recover financially.

APPLICATION FOR EXCLUSION OF INCOME FROM BANKRUPTCY PROPERTY AND DISCHARGE IN THE YEAR

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October 2025

In previous articles, we referred to the procedure followed for declaring minor bankruptcy, as well as to the assets held by the debtor – bankrupt after being declared bankrupt. In this article, we will focus on the specific provision of Article 92(3) of Law 4738/2020 ("KAF") for the full exemption of part of the annual income of the bankrupt – debtor from the bankruptcy estate and the consequent activation of the provision of Article 192(2) KAF, pursuant to which the bankrupt is released from his debts one (1) year after the declaration of bankruptcy.

1. The legislative provision

One of the main consequences of the declaration of bankruptcy is the separation of the bankrupt person's property into bankruptcy and post-bankruptcy property for the purposes of bankruptcy expropriation. Specifically, according to the provisions of Article 93(1) of the Bankruptcy Code, the debtor may no longer administer his property, i.e. dispose of and manage it, as these powers are now vested in the bankruptcy trustee. The bankruptcy estate, which is subject to the above restrictions and serves the purposes of bankruptcy, consists of all the assets belonging to the debtor at the time of the declaration of bankruptcy, while anything acquired after that critical point in time is included in the post-bankruptcy estate and remains under the administration of the bankrupt.

As an exception to the above distinction, Article 92(2) of the Bankruptcy Code provides for the debtor's conditional obligation to contribute a portion of his annual income to the bankruptcy estate until his discharge. In particular, the part of the debtor's annual income is contributed after deducting taxes and social security contributions. However, paragraph 3 of Article 92 of the Bankruptcy Code returns to the rule of excluding the debtor's income from the bankruptcy estate. However, paragraph 3 of Article 92 of the Code of Public Revenue Collection reinstates the rule of excluding the debtor's income from the bankruptcy estate when the specific conditions set out below are met.

2. The conditions for inclusion and the legal consequences

More specifically, in order for the debtor to be eligible

- To qualify for the exceptional provision of Article 92(3) of the Code of Civil Procedure, the following conditions must be cumulatively met:

- **The debtor's fixed assets** (whether their main residence or other fixed assets or all of them) **must have a value of more than one hundred thousand euros (€100,000)**, as determined in accordance with Article 11 of Law 4738/2020.
- **The value of the debtor's assets must exceed 10% of their total liabilities**, which will be determined based on the stage of the bankruptcy proceedings and, in particular, based on the progress made in the claims verification process. Specifically, when the three-month deadline for the notification of creditors' claims has not expired, the debtor's total liabilities will be determined on the basis of the documents submitted with the bankruptcy petition (see Article 79(6) of the Bankruptcy Code).
- **Assets acquired during the twelve months** preceding the filing of the bankruptcy petition **shall not be taken into account**.

If the above criteria are met, **the debtor's annual income, regardless of amount, up to five times the reasonable living expenses, is excluded from the bankruptcy estate** (indicatively, based on ELSTAT statistics, the amount of reasonable living expenses per year for an adult is €6,448 and five times that amount is €32,240). The ratio legis of the legislative provision in question

, as it appears from the explanatory memorandum to the KAF, is to avoid overburdening the debtor with the obligation to contribute part of his income, especially when he has already contributed a significant and sufficient part of his assets to the bankruptcy proceedings (see, for example, No. 6/2023 Eirilou).

In order for the debtor to benefit from this favourable provision, he must submit a relevant application to the Bankruptcy Court (or, alternatively, include a relevant request in the bankruptcy application) and a relevant court decision must be issued, in which the Court will recognise that the above conditions are cumulatively met and will then exclude from the bankruptcy estate the part of the annual income that the bankrupt person was required to contribute to the bankruptcy estate.

A significant advantage of the debtor who has been declared bankrupt being subject to the provisions of Article 92(3) of the Bankruptcy Code is the consequent application of the provisions of Article 192(2) of the Bankruptcy Code. More specifically, in principle, the bankrupt debtor is fully discharged from any debt to the bankruptcy creditors, regardless of whether they have been notified or not, thirty-six (36) months from the date of the declaration of bankruptcy, unless an appeal is lodged within the above time limit by any person with a legal interest against the discharge. It should be noted that such an appeal may also be lodged by intervening in the discussion of the application for exemption of the bankrupt person's income.

However, specifically for debtors who meet the conditions for the exemption of their income, as analysed above, the deadline for the discharge of their debts has been shortened to one (1) year from the declaration of bankruptcy. In this regard, , Article 245 of Law 5222/2025 (Government Gazette A 134/28.07.2025) clarified that for the application of the provision of Article 192(2) of the Bankruptcy Code and the discharge within one (1) year, a court decision must be issued by the bankruptcy court, exempting the debtor's income from the bankruptcy estate on the basis of Article 92(3) of the Bankruptcy Code. Consequently

how, it is not sufficient merely to fulfil the conditions of the provision, but it is also necessary for the bankruptcy court to issue a relevant decision recognising that the criteria in question have been met and ordering the exemption of the income (see No. 93/2024 EirAth). Of course, it is worth noting that, in decision no. 564/2025 of the Single-Member Court of First Instance of Athens, it was ruled, as legally correct, that those entitled to benefit from the provision of Article 92(3) 3 of the Code of Civil Procedure and exemption from their debts within one (1) year are also debtors who meet all the conditions of the provision for the exclusion of their income from the bankruptcy estate, but who have no income. More specifically, in the case in question, the applicant, who had been declared bankrupt, had zero income, debts amounting to €1,380,04800, and given that the total value of his assets not acquired in the 12 months prior to the filing of the bankruptcy petition amounted to €268,816.35, which exceeds €100,000 and 10% of his total debts, i.e. €138,004.80, he filed an application with the Bankruptcy Court for recognition of the conditions of Article 92(3) of the Bankruptcy Code and discharge of his debts for (1) year, which was accepted.

3. Conclusion

In conclusion, with the above set of provisions of the Bankruptcy Code, the legislator has provided for more favourable treatment of a specific category of debtors who have gone bankrupt, by exempting them, under certain conditions, from the obligation to pay part of their annual income into the bankruptcy estate. This provision is based on the fact that these debtors have already contributed a significant portion of their assets to the bankruptcy estate, while the most important legal consequence of falling under the provision of Article 92(3) of the Bankruptcy Code is that they are released from their debts within one (1) year of being declared bankrupt.

OUT-OF-COURT MECHANISM: THE SETTLEMENT OF DEBTS ARISING FROM JOINT AND SEVERAL LIABILITY – THE CASE OF LIQUIDATED OR LEGAL ENTITIES UNDER LIQUIDATION

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The amendment of Article 7 of Law 4738/2020 (scope of application of the law) by Article 75 of Law 5043/2023 put an end to a significant asymmetry in the out-of-court mechanism, now allowing the settlement of debts from dissolved or still liquidated legal entities through an application by the natural persons who are jointly and severally liable (such as administrators, board members or partners). Now, after following the procedure for updating their personal tax identification number with the debts of the legal entity for which they are liable, natural persons can submit an application to the out-of-court mechanism and settle all their debts - personal and joint and several liabilities.

One of the most serious problems faced until recently by those wishing to settle debts to the State and social security institutions was the inability to include in the out-of-court debt settlement mechanism debts arising from dissolved or liquidated legal entities in which they had previously participated as partners or legal representatives, and, in this capacity, were jointly liable for these debts. In order to enable settlement through the out-of-court mechanism in such cases, the legal entity had to be revived first, so that it could submit an application to the out-of-court mechanism and settle these debts in its own name, while it would have to continue to exist until the out-of-court settlement was completed.

This situation presented a stark contradiction: the State sought to collect significant amounts from natural persons who were considered jointly liable (through enforcement measures), but did not give them the opportunity to settle these same debts through the out-of-court mechanism of Law 4738/2020, despite their willingness to repay the above debts under sustainable terms. This created an unreasonable "hostage situation" for debtors: while there was an intention to settle and a possibility of repayment, the institutional framework did not allow for any solution, resulting in both the inability to "restructure" the natural persons themselves and the loss of public revenue, since the companies that had created the debts no longer existed.

Furthermore, an additional technical obstacle concerned the method of certifying these debts. According to established practice, the amounts are certified exclusively to the company's tax identification number, and not to the natural persons

(managers, board members or partners), with the result that it was not possible to submit an individual application to the out-of-court mechanism (because it was impossible to retrieve these debts from the out-of-court platform). This obstacle was explicitly confirmed by Circular **EGDICH 151323 EX 2021/29-11-2021**, which stipulated that it is not possible to include debts of dissolved legal entities when these have not been transferred to the tax identification number of natural persons.

Finally, according to Article 7(3)(c) of Law 4738/2020, as it stood prior to its amendment by Article 75 of Law 5043/2023, legal entities that were in the process of dissolution or liquidation **were excluded** from the scope of the law. Consequently, **the companies themselves** could **not** submit an application for settlement. The above situation was resolved following the amendment of the scope of Article 7 of Law 4738/2020 and the inclusion of the possibility of settling the debts of legal entities that have been dissolved or are in liquidation, at the request of a third party who is jointly and severally liable with the legal entity for the debts certified against it.

THE PROCEDURE

The procedure for settling the above-mentioned debts requires the natural person's tax identification number to be updated with the legal entity's disputed debts. The specific issues of the procedure, as it has now been formulated, are regulated by Joint Ministerial Decision No. 13131 EX 2024. Prior to this procedure, of course, it must be ensured that the legal entity is listed as dissolved or in liquidation in the General Commercial Registry (GEMI) and the EFKA, and that it has ceased its operations vis-à-vis the AADE.

Once the above has been completed, any jointly liable natural persons who wish to take advantage of this option provided by law must complete, prior to submitting their application on the out-of-court mechanism platform, in order for the legal entity's debts to be attributed to their personal tax identification number. The procedure is separate for debts arising from joint liability to the AADE and to the EFKA.

Specifically, with regard to debts **owed to the AADE**, before creating an application on the out-of-court platform, the natural person must submit a request to the AADE's electronic platform, after logging in with their personal taxinet codes, in order to update their tax identification number with the debts of the legal entity. The request must be submitted to supporting documents

"Notice of Commencement of Liquidation" of the legal entity to the General Commercial Registry (GEMI), as well as the "History of Changes of Natural Person" in order to verify the period in question during which the natural person is liable for the debts. Once the request has been accepted, a certificate of information on the natural person's tax identification number will be issued, and then the application can be successfully submitted to the out-of-court mechanism.

With regard to the settlement of debts arising from joint liability **to the EFKA**, the procedure is carried out in the physical presence of the natural person or their legal representative at the competent KEAO branch (of the legal entity), and the same supporting documents are required as those submitted with the request on the AADE electronic platform ("Notice of Commencement of Liquidation" of the legal entity to GEMI, "History of Changes to Natural Persons"). In this case, the management period of the natural person in question is recorded, and, by extension, the debts certified to the legal entity during the period in question are attributed to the natural person.

Finally, once the above procedures have been successfully completed, the natural person can create the application on the out-of-court mechanism platform. When following the steps to create the application, the applicant must not forget to state that they wish to settle their debts arising from joint liability by selecting the corresponding option provided by the platform.

provided by the platform. Provided that all steps have been followed correctly, the debts of the legal entity are included in the natural person's application.

Special case: The case of several jointly and severally liable persons for the same debt

The out-of-court settlement will be based on the applicant's ability to repay. Therefore, in cases where there are several jointly liable persons, the arrangement may vary depending on the financial and property situation of each applicant or depending on the existence of other debts to be settled by that person. Regardless, the legal consequences of the arrangement apply both to the applicant and the legal entity against which the debts covered by the arrangement have been certified, as well as to any third parties who are legally jointly and severally liable for the debts covered by the settlement.

In particular, in the case of several persons being jointly and severally liable for the same debt, Joint **Ministerial Decision No. 13131 EX 2024** (para. 4) stipulates that, by way of derogation from the rule of paragraph a` 2. of Article 22 of Law 4738/ 2020 (A` 207), in the event of loss of the arrangement, a new arrangement for the same jointly and severally liable debts is permitted, provided that the application is submitted by another jointly and severally liable person who is not excluded from the scope of Chapter A of Part II of Law 4738/2020.

In conclusion

The above arrangement constitutes substantial institutional progress, as it resolves a significant impasse for natural persons who had become jointly liable for financial debts without having the possibility of settlement. At the same time, it offers the State and insurance institutions a more effective collection tool, strengthening voluntary compliance and promoting a more realistic and fair approach to dealing with business debt.