



GREEK LAW DIGEST

The Ultimate Legal Guide
to Investing in Greece

**Nikolaos Ch. Chairopoulos
& Associates Law Offices**

LAW 3869/2010 - ARRANGEMENT OF DEBTS
OF OVER DRAFT INDIVIDUALS



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HELLENIC REPUBLIC
Ministry of Development,
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GREEK LAW DIGEST

ISSN 2241-133X

www.greeklawdigest.gr

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Published under the Auspices of



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**INVEST
IN GREECE**
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LAW 3869/2010 - ARRANGEMENT OF DEBTS OF OVER DRAFT INDIVIDUALS

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1. Does Greek law include a special regime for individual's bankruptcy?

Greek law, until recently, had no regime concerning individual's (non-merchants) bankruptcy. Law 3869/2010, enacted on September 2010, was the first piece of Greek legislation dealing with the issue of over-credited individuals, providing them with the option to achieve an official judicial settlement, concerning the debts they were not able to repay.

2. What is the scope of law 3869/2010?

Law 3869/2010 is applicable in debts (a) of individuals who do not have the legal capacity to get bankrupt (according to merchants bankruptcy law) and (b) have, by no fraudulent intention, permanent inability to pay back their debts.

According to article 1 of law 3869/2010, debts that have been undertaken during the last year before the submission of the discharging application, as well as debts stemming from illegal acts committed by fraudulent intention, administrative fines/sanctions, fines, tax/debts due towards the State and Organisations of Local Authorities, Public law corporate bodies charges and contributions towards social security funds, are excluded from the scope of the provision.

3. Is it possible for a debtor to be discharged by debts more than once?

No. The debtor can be discharged by his debts once only.

4. What is the procedure that has to be followed in order to achieve a settlement or relieve of debts?

According to law 3869/2010, the procedure has three steps:

1. Out of Court Settlement
2. In-Court Compromise
3. Judicial settlement –debts discharge

5. What is the procedure to be followed in Step 1: "Out of Court Settlement"?

The first step of the procedure is an attempt to achieve an out-of-court settlement, with the creditors consent. In practice, the debtor has to submit an application to each creditor of his, proposing a settlement, concerning his debts. This attempt is a prerequisite in order to proceed to the second step of the procedure of law 3869/2010 and has to take place during the last six months before applying for an in-Court settlement (second step). The failure of the out-of-court settlement must be certified in written by the competent authorities, as these are defined in Article 2, or by a lawyer.

If the out-of-court settlement is achieved, the minutes of the settlement are being validated by the competent Magistrate's Court, and they are considered to have legally binding execution force.

According to article 2 par. 4 the Credit Institutions (creditors) must provide the debtor with a detailed statement of the debt, within 5 working days after the submission of an application, free of charges. A fine between 500 and 10.000 € can be imposed on the Credit Institutions which do not comply with the obligations set by article 2.

6. What is the procedure to be followed in Step 2: "In-Court Compromise"?

In the event of failure of the "Out of Court Settlement" the debtor seeking relieve from his debts has to submit a petition to the competent Court, which according to article 3 of law 3869/2010 is the Magistrate's Court of the debtor residence.

The petition must be accompanied by:

- i) a document containing the property and the income status of the debtor and his/her spouse.
- ii) a list of creditors and their claims, divided into capital, interest and expenses.
- iii) a settlement plan, taking into account the special circumstances of the debtor's assets, property and family situation combined with the creditors' interests.

Additionally, within one month from the submission of the petition to the competent Court, the debtor must also submit:

- a) the certificate of the failure of the out-of-court settlements signed by competent authorities of article 2 par. 2
- b) a statutory declaration that the property and creditors lists provided by him are true
- c) every relevant document about his property, his/her income status, his creditors and their claims.

If a creditor is not included in the provided list of creditors, his claim is not affected by the whole process.

The hearing for this petition is set obligatorily within 6 months from its submission.

7. How are the creditors aware that the debtor submitted a petition? How can they express their views on the proposed settlement?

The debtor must deliver the petition (by a bailiff) to the creditors within one month from the submission of the petition with a simultaneous invitation to submit to the Court their written remarks declaring if they agree with the proposed settlement plan.

The creditors have access to all the documents submitted to the Court by the debtor according to article 4 paragraph 5 (see question 6). Creditors must express -in written- their views on the settlement plan and/or propose modifications within an exclusive term of 2 months (deadline) following the submission of the petition. In practice, this means that if the petition is delivered at the end of the first month, the time of response for the creditors is limited to one month.

The law introduces a presumption according to which if a creditor does not object to the settlement within the abovementioned period, it is assumed that he agrees with the content of the settlement plan.

After the expiration of the 2 months' deadline, the debtor is able to modify the proposed settlement plan within 15 days in order to achieve an agreement, and the creditors can

express in written their views about the modified plan within 20 days starting from the expiration of the deadline for the submission of the modified plan. The abovementioned presumption applies in this case equivalently.

8. Does the submission of the petition result in suspension of execution measures?

No. According to article 6 the submission of the petition does not, automatically, result in suspension of the execution measures. However the debtor or anybody else having legal interest, can apply for provisional remedies suspending any measures of procedural enforcement against the debtor, or any other provisional remedy in order to avoid any reduction of the value of the debtor's assets. The suspension is granted until the judgment on the submitted petition is issued; provided that the petition is likely to be successful and that it is probable that the debtor will suffer substantial damage if the suspension is not granted. If a suspension is granted a simultaneous asset disposal prohibition is imposed to the debtor.

9. Do the debts bear interest after the delivery of the petition?

Not secured, with collaterals, claims do not bear interest after the delivery of the petition to the creditor, while secured with collaterals claims still bear contractual interest of non-delinquent debts, until the issuance of the judgment on the petition.

10. How can an in-Court compromise be achieved?

Case I: If all the creditors agree with the proposed plan or if none of the creditors object to the proposed plan within the deadlines described in question 7, it is assumed that the settlement plan was accepted and it is validated by the competent Court.

Case II: If creditors representing more than ½ of the total amount of debts, including all secured creditors and at least ½ of labour claims, agree with the settlement plan, the Court may substitute the consent of the rest of creditors who disagree and accept that a compromise and settlement has occurred.

The above substitution of the creditors' consent is not allowed and the compromise is not validated when;

- i) the claim of the creditor who objects is not satisfied to the same extent as that of others, or
- ii) if the objecting creditor proves that had the procedure went on to the third stage of judicial settlement and debt discharge it would recover a higher amount of the debt or
- iii) if the claim of the objecting creditor is contested by the debtor or by any other creditor.

The claim of an unsecured creditor which is not included in the settlement plan is written off in case the creditors did not express their views on the proposed plan within the deadline of 2 months after the submission of the petition, provided that the petition was delivered to them.

11. Is it possible for the creditors to charge the debtor with judicial expenses for the procedure of the achievement of the in Court compromise?

No. The creditors cannot claim any amount for judicial expenses for this procedure.

12. What is the procedure to be followed in Step 3: “Judicial Settlement”?

If the settlement plan is not accepted by the creditors, or the requirements for the substitution of consent of the creditors who do not agree are not met, the procedures for the judicial debt discharge are activated. In that case the Court after examining whether the criteria of the law are met, it proceeds with issuing its ruling on the petition. If a debtor's petition is rejected a new petition cannot be submitted before one year.

13. What happens if the debtor's income/property are insufficient to cover the debt?

If the Court rules that the debtor's property and income are inadequate after taking into consideration the spousal contribution, in conjunction with the personal circumstances of the debtors and his family, it will identify a specified amount that the debtor has to pay, on a monthly basis for a period of 4 years directly to his creditors (except if the Court rules otherwise). In that case all the creditors are ranked *pari passu*.

In exceptional cases (e.g. permanent unemployment or severe health problems of the debtor), the Court can define very low monthly or zero amount payments. In that case the Court can set a new hearing (not within the next 5 months) in order to modify the monthly payment plan.

The judgment is directly enforceable, and no suspension can be granted. In addition no judicial expenses can be claimed. The amount of settlement may be modified by new Court ruling, in the event of subsequent facts or changes in the debtor's property or income status.

14. Does the debtor have any additional obligations during the settlement period?

During the period of the settlement the debtor is obliged to work or, at least, to make reasonable effort to find an appropriate position. Moreover he is obliged to inform the Court about any changes concerning his address, his employer and any substantial improvement of his income or his assets.

15. Does the debtor's property have to be liquidated? Are there any exceptions?

If the Court rules that liquidation of the property of the debtor is required, it proceeds with the appointment of a liquidator. Secured creditors are satisfied according to their privilege from the product of the liquidation.

However, it is possible for the debtor to submit a liquidation proposal requesting the exemption of its main residence from the property under liquidation, provided that the main residence does not exceed the size set by the tax laws for the acquisition of first residence +50%.

In such a case the Court proceeds to the settlement of the debt, ruling that the debtor has to repay a total amount of 85% of the market value of the main residence, as this value is estimated by the Court.

Under such circumstances the debtor can enjoy a grace period, and the payable interest cannot exceed that of current (not denounced) loans, with no compound interest. The duration of the settlement cannot exceed a period of 20 years and secured creditors are satisfied according to their privilege from the debtor's payments.

The protective provisions for the debtor's main residence apply equivalently, in case of the only property -that can be used as a residence- of a debtor who lives in another property (belonging to a third party), provided that his/her spouse has no property. If the debtor does not follow the repayment schedule set by the Court, the creditor whose claim is not repaid can proceed to the liquidation of the debtor's main residence. However, the creditor cannot proceed before the debtor fails to pay at least four monthly installments.

16. Duty of provision of accurate statements.

The debtor has the duty to provide the creditors and the Court with accurate information on his property and income status.

Creditors are allowed to have access to the data pertaining to the economic status and the current income of the debtor.

17. Can the debtor be discharged of the remaining debts after complying with the 4 years repayment schedule?

Yes. Subject to the provisions concerning the liquidation of debtor's property (see question 15), the debtor is discharged of the remaining debt, if he complies with the Court's ruling.

In case the debtor delays any payment for more than three months or is frequently in delay, the Court, on request of any creditor, may declare his defeasance from the settlement.

In case of non compliance of the debtor with the terms of the Court decision, the creditors' claims are established again to the amount they were before the discharge (as if the discharge petition has never been submitted to the court).

18. Are the guarantors discharged?

Notwithstanding the fact that the discharge process run by the debtor does not relieve the guarantors of the debt, the guarantors can take advance of the provisions of law 3869/2010, independently. However, the guarantors can not avail themselves by the debt discharge process of law 3869/2010 if the Court is satisfied that the guarantor's intention, when giving his guarantee, was to make profit out of this activity.

19. How are the submitted petitions archived?

All submitted petitions will be archived in the Secretariat of every Magistrate's Court. A general Archive with the names of all debtors having submitted a petition and the results of all these petitions will be kept in the Athens Magistrate's Court, with data from all the country.

20. How long are the Credit Institutions allowed to keep data?

The maximum period that Credit Institution or third persons are allowed to keep data concerning the procedures of law 3869/2010 is 3 years, after the discharge of the debtor according to article 11 (see question 17).

21. Are there any benefits for the Credit Institutions?

In case of deletion of credit institutions' claims, under the provisions of law 3869/2010, the amounts deleted decrease the taxable income of the credit institution, acting as tax benefit for them.

22. Are there any legal remedies available against Judgments of the competent Court?

The Judgments of the competent Court are subject to appeal and cassation, according to article 560 of the Greek Civil Procedure Code.

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