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HELLENIC REPUBLIC
MINISTRY OF JUSTICE
GENERAL DIRECTORATE OF JUSTICE
DIRECTORATE OF COURTS ORGANISATION AND
OPERATION

Athens, 03.03.2021
Ref.No: 11223

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RE: Drafting of an integrated checklist of ratification requirements of consolidation agreements

DECISION

THE MINISTER OF JUSTICE

Having regard to:

1. Par. 3 of article 72 of Law 4738/2020 “Settlement of debts and provision of second chance and other provisions” (A 207);
2. The provisions of article 90 of the “Code of Legislation on Government and government entities”, sanctioned by the first article of presidential decree 63/2005 (A 98) and maintained in force by indent 22 of article 19 of Law 4622/2019 (A 133);
3. The provisions of presidential decree 81/2019 “Establishment, merger and renaming of Ministries and determination of powers – Transfer of agencies and powers among Ministries” (A 119);
4. The provisions of presidential decree 83/2019 “Appointment of Ministers, Alternate Ministers and Deputy Ministers” (A 121);
5. The provisions of presidential decree 6/2021 “Regulations of the Ministry of Justice, Transparency and Human Rights” (A 7);
6. The fact that the provisions of this decision do not entail any expenses for the State budget;

WE HEREBY RESOLVE

Article 1

An integrated checklist for applications to ratify consolidation agreements, adapted to the requirements of very small-, small- and medium-sized enterprises, is hereby drafted as an Annex, attached hereto and forming an integral part hereof.

Article 2

The list in the Annex set out in article 1 will be posted on the website of the Ministry of Justice in Greek and English.

Article 3

This decision shall come into force on publication in the Government Gazette.

Annex

Checklist of ratification requirements of consolidation agreements

A. Application information

Provision	Application information	Practical guidelines
Article 45§1(a) of Law 4738/2020 (A 207)	Identity of debtor	The debtor must be a person with business activity, whose centre of main interests should be situated in Greece (article 32§1). If the debtor is a natural person, identity is established by full name, identity card or passport, residence, tax identification number and, if the person is registered with GEMH, GEMH number. If the debtor is a legal person, identity is established by name, registered offices, tax identification number and, if the person is registered with GEMH, GEMH number or, in case of foreign legal person, relevant registration information.
Article 45§1(b) of Law 4738/2020 (A 207)	Debtor's assets and liabilities as near as possible to the date of application and, in any event, no more than three months, including the value of assets and description of the debtor's financial state and the position of employees, and description of the reasons and extent of debtor's difficulties	Information shall be derived from the financial statements set out in article 46§1(b), in conjunction with the latest balance sheets.
Article 45§1(c) of Law 4738/2020 (A 207)	Affected parties, either by name or description of debt categories, on the basis of whether debt has general or special privileges, as well as claims or equity rights of such parties covered by the consolidation agreement	Affected parties are creditors whose legal status before the ratification of the consolidation agreement (article 34§1) is affected thereby. Affected parties may also be the debtor's shareholders or partners.
Article 45§1(d) of Law 4738/2020 (A 207)	Categories in which creditors are grouped under article 34 for the purposes of approval of the consolidation agreement, and the corresponding values of claims and equity rights of each category	The value of claims with special privileges and of other claims, i.e. both claims with general privileges and ordinary claims (article 34§1) should be stated. Claims not affected by the consolidation agreement shall not be stated here. The consent percentage of

		each creditor category achieved should also be stated here.
Article 45§1(e) of Law 4738/2020 (A 207)	Parties, either by name or description of debt categories, who are not affected by the consolidation agreement and description of the reasons why it is proposed that such parties are not affected	The reasons why a claim or a category of claims may not be affected include, but are not limited to: (i) the position of the claim due to general or special privileges is such that, if affected, it would violate the principle of non-deterioration of creditors' position (article 54§3(b)) or (ii) this is dictated by major business or social reasons (article 54§3(d)). The consolidation agreement cannot affect: (i) credits secured by financial collateral agreement within the meaning of article 2 of Law 3301/2004 to the extent that they are satisfied by such collateral, unless the collateral taker agrees otherwise, and (ii) acquired rights in professional pensions (article 39§4).
Article 45§1(f) of Law 4738/2020 (A 207)	Identity of the special trustee that may be proposed to be appointed.	
Article 45§1(g) of Law 4738/2020 (A 207)	The terms of the consolidation plan, including in particular: (a) the proposed settlement of the debtor's assets and liabilities, (b) the length of proposed consolidation measures, on a case-by-case basis, (c) the ways to provide information and hold consultations with employee representatives, to the extent that this is required by EU and national laws, (d) any general consequences concerning employment, such as dismissals, part-time employment etc., (e) any new financing expected in the context of the consolidation agreement and the rationale for the necessity of the new financing for the implementation of the consolidation plan, (f) the rationale explaining why the consolidation agreement has reasonable prospects of ensuring	<ol style="list-style-type: none"> 1. An indicative and non-limitative enumeration of the possible arrangements for the debtor's assets and liabilities is set out in article 39§1. 2. The law does not regulate the length of consolidation measures, except the suspension of individual and collective proceedings by creditors for a certain period after the ratification of the agreement, which provides that it is not binding for non-contracting creditors and creditors whose consent is derived under article 35 for a period of over three (3) months from the ratification of the agreement (article 39§1(h)). 3. Information to and consultation with employee representatives are provided

	the viability of the business and the necessary requirements for the success of the consolidation plan.	especially when (a) the consolidation agreement provides for mass dismissals (Law 1387/1983, Directive 98/59/EC) or (b) the consolidation agreement leads to transfer of employment relationship to another employer due to transfer of business, establishment or part of business or establishment (presidential decree 178/2002, Directive 2001/23/EC).
Article 45§2 of Law 4738/2020 (A 207)	If some of the information set out in article 45§1 is not known in whole or in part to the person filing the application, especially when the application is filed by a creditor, the application shall comprise the reasons why such information is not known and the relevant estimates of the person filing the application, even by approximation or speculation.	
Article 54§5 of Law 4738/2020 (A 207)	In the event that all information documenting the validity of the application has not been submitted or in the event that it finds that the consolidation agreement should not be ratified, the court may, instead of rejecting the application, set a deadline to submit documents, provide clarifications or amend the consolidation agreement. Such documents or clarifications or amendment should be submitted by the deadline set by the court, which cannot be more than twenty days.	

B. Accompanying documents

1. In case of consolidation agreement concluded between the debtor and his creditors:

Provision	Document	Practical guidelines
Article 46§1 (a) of Law 4738/2020 (A 207)	Signed consolidation agreement	1. In case of consolidation agreement concluded between the debtor and his creditors,

		<p>the documents set out in article 46§1 must accompany the ratification application, subject to inadmissibility.</p> <p>2. The consolidation agreement shall be submitted in the form of a private document (article 42). Therefore, the autograph signature of the parties on one or more originals shall be required (Civil Code, article 160) or, in case of electronic documents, approved digital signatures shall be required (article 25§2 of Regulation (EU) 910/2014). The signature of creditors consenting by electronic vote shall not be required. By way of exception, if the obligations assumed by the consolidation agreement require the drafting of a public document, the agreement must be drafted by a notary public, but the notarial document may be replaced by statements before the court.</p>
Article 46§1(b) of Law 4738/2020 (A 207)	Financial statements of the debtor, if any, for the last financial year available	In case of capital companies, such financial statements must be published and approved by the general meeting.
Article 46§1(c) and article 34§3 of Law 4738/2020 (A 207)	List of creditors dated no more than three (3) calendar months before the date of submission of the consolidation agreement to the court	The list of creditors shall comprise all creditors, irrespective of general or special privileges, whose claims existed on the date set out in the previous sentence, even if they were not outstanding. Creditors from reciprocal contracts shall be included only to the extent that they have fulfilled their own provision to the debtor or they have claims for compensation following withdrawal from the contract. Creditors shall also include persons who have claims from leases due from the date set out in the second sentence until the contractual date of contract expiry.
Article 46§1(d) and article 48 of	Expert report	1. The expert report must (a) set out the expert's opinion on

Law 4738/2020 (A 207)		<p>whether the requirements are met for the ratification of the consolidation agreement, specifically those in article 54§1 or 2 and 3(a), (b) and (d), (b) comprise the expert's certification of the accuracy and validity of the list of creditors accompanying the consolidation agreement, with special reference to secured creditors, and (c) have a list of the debtor's assets attached.</p> <p>2. The choice of and impediments to the appointment of expert are regulated by article 48§2 and 3.</p>
Article 46§1(e) of Law 4738/2020 (A 207)	Certificate of debts to the State and Social Security Entities	The certificates must have been issued one month before the submission of the ratification application.
Article 46§2 of Law 4738/2020 (A 207)	Other documents	The application may be accompanied by other documents corroborating the information provided (such as recent certificates of encumbrance by the competent cadastral office, estimates of value of real estates, financial offers to customers, corporate announcements etc.), certified as to the accuracy of their content by the accounting department manager, if any, and the legal representative of the debtor's business. Such documents may also be submitted with proposals during the hearing of the ratification application.
Article 54§5 of Law 4738/2020 (A 207)	In the event that all information documenting the validity of the application has not been submitted or in the event that it finds that the consolidation agreement should not be ratified, the court may, instead of rejecting the application, set a deadline to submit documents, provide clarifications or amend the consolidation agreement. Such documents or clarifications	

	or amendment should be submitted by the deadline set by the court, which cannot be more than twenty days.	
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2. In case of consolidation agreement concluded only by creditors

Provision	Document	Practical guidelines
Article 47§1 of Law 4738/2020 (A 207)	Application to declare the debtor bankrupt	<ol style="list-style-type: none"> 1. In case that the consolidation agreement is concluded only by the debtor's creditors and when the debtor has ceased payments, an application to declare the debtor bankrupt and an expert report should also be submitted, subject to inadmissibility. 2. In case that the consolidation agreement was concluded without the debtor's participation without the debtor having ceased payments (in one of the instances set out in indents (b)-(d) of par. 2 of article 34), it shall not be required to submit an application to declare the debtor bankrupt.
Article 47§1 and article 48 of Law 4738/2020 (A 207)	Expert report	<ol style="list-style-type: none"> 1. The expert report must set out the expert's opinion on whether the requirements are met for the ratification of the consolidation agreement, specifically those in article 54§1 or 2 and 3(a), (b) and (d). It should also comprise the expert's certification of the accuracy and validity of the list of creditors accompanying the consolidation agreement, with special reference to secured creditors, stating that the certification is given on the basis of information made available to the expert pursuant to article 48. If the required information is made available to the expert, a list of

		<p>the debtor's assets should also be attached.</p> <p>2. The choice of and impediments to the appointment of expert are regulated by article 48§2 and 3.</p>
Article 47 of Law 4738/2020 (A 207)	Other documents under article 46	<p>1. The other documents set out in article 46 shall be submitted along with the application, if the debtor has provided them to the creditors or the appointed expert.</p> <p>2. In case of deficiencies, the court may postpone the issuance of final judgment and order the debtor to provide the appointed expert with all required information for the completeness of the application within one (1) month of the issuance of its non-final judgment.</p>
Article 54§5 of Law 4738/2020 (A 207)	In the event that all information documenting the validity of the application has not been submitted or in the event that it finds that the consolidation agreement should not be ratified, the court may, instead of rejecting the application, set a deadline to submit documents, provide clarifications or amend the consolidation agreement. Such documents or clarifications or amendment should be submitted by the deadline set by the court, which cannot be more than twenty days.	

C. Substantive ratification requirements

Provision	Requirement	Practical guidelines
Article 32§1 of Law 4738/2020 (A 207)	The debtor must have a business activity	
Article 32§1 of Law 4738/2020	The centre of the debtor's main interests must be situated in	The concept of centre of main interests is defined in article 78§3 and article

(A 207)	Greece	3§1 of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings
Article 32§1 and 2 of Law 4738/2020 (A 207)	There must be a threat to the debtor's actual or future ability to pay its debts as they fall due in a general manner or a likelihood of insolvency, which may be eliminated by the pre-bankruptcy consolidation procedure.	
Article 34§1 of Law 4738/2020 (A 207)	As a rule, the debtor must give his consent	
Article 34§2 of Law 4738/2020 (A 207)	The agreement of the debtor is not required if one of the following requirements are met: a) if the debtor has ceased payments at the time of conclusion of the agreement, or b) in case of capital company, provided that the debtor's total own capital becomes less than one-tenth (1/10) of the share capital and has not been restored to at least such percentage within the management period following the reference date of the annual balance sheet where this requirement was identified, or c) if the debtor has not filed financial statements for registration for at least two (2) consecutive management periods, or d) in case of limited liability company, when the requirements are met to implement par. 2 of article 45 of Law 3190/1955 (A 91).	The requirements relate only to the application submitted by the debtor's creditors. The non-requirement of debtor's agreement shall also relate to a consolidation agreement by transfer of business under articles 39§1(g) and 64. The presumptions set out in article 77§2 shall be taken into consideration to verify whether the debtor has ceased payments.
Article 35§1 of Law 4738/2020 (A 207)	If the debtor is a legal person, the sole person competent to consent to a consolidation agreement on its behalf shall be its manager or administration body, e.g. the board of directors in case of societies anonymes.	In case of one-member administration body, consent shall be given by the person constituting the one-member body by signing the consolidation agreement or a relevant power of attorney. If there are more than one managers who bind the legal person separately by virtue of law or statute, the agreement of one of them shall

		suffice. If there are more than one managers who jointly bind the legal person by virtue of law or statute, the agreement of all of them shall be required. In case of multimember administration body, such as the board of directors of a societe anonyme, a decision of the board of directors shall be required.
Article 35§2 of Law 4738/2020 (A 207)	<p>(a) If the debtor is a legal person, a decision of the general meeting shall be required if so provided for by law or statute.</p> <p>(b) However, if the expert finds in the report set out in indent (d) of par. 1 of article 46 that the residual claim of the company, the partners or the shareholders, as the case may be, is not affected by the implementation of the consolidation agreement, especially as regards the transfer of corporate assets or corporate divisions, the conclusion and implementation of the agreement shall not require any consent of shareholders or partners, notwithstanding any contrary provision in the debtor's statute, unless such consent is required by an explicit provision of applicable corporate laws.</p> <p>(c) A decision of the meeting of the debtor's partners or shareholders shall not be required, even for actions that, according to corporate laws, require such a decision, when the consent of the debtor is not required under article 34.</p>	<p>Explicit provisions of corporate laws that may provide for the need of a decision of the general meeting include, but are not limited to, the provisions of Law 4528/2018 on the powers of the general meeting, the provisions of Law 4601/2019 on the approval of corporate transformation by decision of the meeting of shareholders or partners, as well as (in case of societe anonyme with shares or other securities listed on a regulated market in Greece) article 23 of Law 4706/2020.</p> <p>The decision of the general meeting, when required, does not need to be taken before the submission of the ratification application; it may also be granted after ratification, if this is a requirement for the validity of the consolidation agreement.</p>
Article 35§1 and 3-5, article 37 and article 54§1 of Law 4738/2020 (A 207)	Consent is required, in principle, by the creditors representing, on the one hand, more than fifty percent (50%) of the claims with special privilege and, on the other, more than fifty percent (50%) of other claims.	<ol style="list-style-type: none"> 1. In the calculation of the percentages of consenting creditors, any creditors not affected by the consolidation agreement are not taken into account. The claim of a creditor is considered non-affected when the consolidation agreement does

		<p>not affect the legal situation existing before the ratification of the consolidation agreement.</p> <p>2. The percentages of consenting creditors are calculated on the basis of a list of creditors attached to the consolidation agreement, having removed the non-affected creditors. The date of this list cannot be earlier than three (3) months before the agreement was submitted to the court. The list of creditors shall comprise all creditors, irrespective of general or special privileges, whose claims existed on the date of the list, even if they are not outstanding. The claims comprised in the list of creditors must derive from the debtor's books or recognised or characterised as probable by the judgment of a court of any instance of jurisdiction, including by the injunction measures procedure, notified to the debtor on the date of the list at the latest. In case of agreement without the involvement of the debtor, the list of creditors shall be prepared on the basis of information drawn from the latest published financial statements of the debtor, if any, the books and records of the contracting creditors and judgments of courts of any instance of jurisdiction, including decisions issued by the injunction measures procedure.</p> <p>3. For the requirements of calculation of the percentages of consenting creditors, any contingent claims shall not be taken in account.</p>
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		conclusion of the consolidation agreement, compared to its position in case of bankruptcy, and (c) according to the expert's report set out in article 46§1(d), the assessed claims of all these persons and entities at the time of conclusion of the consolidation agreement are lower than the total claims of private creditors.
Article 54§2 of Law 4738/2020 (A 207)	<p>A consolidation agreement that has not been approved by creditors representing the majority of the claims of one of the categories set out in article 54§1 may be ratified by the court and become binding vis-à-vis the non-consenting category if the consolidation agreement meets the following requirements as a minimum:</p> <p>(a) It has been approved by creditors representing more than sixty percent (60%) of the total claims against the debtor and more than fifty percent (50%) of claims with special privileges,</p> <p>(b) the non-consenting affected creditors have a more favourable treatment in relation to every creditor whose claim has a lower payment priority, when this is established on the basis of their classification in the bankruptcy liquidation under article 167§2,</p> <p>(c) no category of affected parties can, in the context of the consolidation agreement, receive a value higher than its total claim against the debtor, and</p> <p>(d) in case of enterprises that meet the criteria of definition of very small entity under Law 4308/2014 (A 251), the agreement must have been proposed by the debtor or with</p>	

	the consent of the debtor.	
Article 54§3(a) of Law 4738/2020 (A 207)	It must be likely that the consolidation agreement creates reasonable prospects of ensuring the viability of the debtor's business, as restructured on the basis of the consolidation agreement.	The expert's report under article 48 shall be mainly taken into account to establish such likelihood.
Article 31 and article 53§3(b) of Law 4738/2020 (A 207)	It must be likely that the principle of non-worsened creditors' position is fulfilled within the meaning of article 31.	<ol style="list-style-type: none"> 1. The fulfilment of this criterion must be examined only in relation to creditors whose consent is derived or may be derived under article 37§2 and those who oppose the ratification of the agreement either by filing an intervention before the court or by giving a negative vote in case of electronic voting or, alternatively, by initiating third-party proceedings after the ratification. 2. The principle of non-worsened position of creditors is considered to be fulfilled when none of the non-consenting creditors has been put, on the basis of the consolidation agreement, in a worse position in relation to its position in case of bankruptcy of the debtor. 3. The expert's report under article 48 shall be mainly taken into account to establish such likelihood.
Article 54§3(c) of Law 4738/2020 (A 207)	The consolidation agreement must not be the outcome of fraud and must not violate provisions of mandatory law, especially competition law.	The provisions of mandatory law that the consolidation agreement must not violate may originate either from Law 4738/2020 or any other substantive law. By way of example, a consolidation agreement cannot be ratified when it prejudices rights in professional pensions (article 39§4) or when it provides for the partnership of enterprises prohibited under article 1 of Law 3959/2011.

Article 54§3(d) of Law 4738/2020 (A 207)	The consolidation agreement must treat creditors in the same position on the basis of the principle of equal treatment.	<ol style="list-style-type: none"> 1. Deviations from the principle of equal treatment of creditors are allowed on important business or social grounds, explicitly described in the court's judgment or when the affected creditor consents to the deviation. By way of example, favourable treatment may be granted to the claims of creditors of the debtor's business whose non-satisfaction substantially prejudices its fame or the continuation of the business (such as substantial suppliers, consumers), claims whose payment is necessary for the subsistence of the debtor and his family, as well as labour claims. 2. The expert's report under article 48 shall be taken into account to establish whether this requirement is met.
Article 54§3(e) of Law 4738/2020 (A 207)	In the event that the consolidation agreement was concluded without the involvement of the debtor, pursuant to article 34§2, it shall be necessary either to ensure the debtor's consent or to establish on the basis of the claim, especially the expert's report, that the consolidation agreement will not render the debtor's legal and financial situation worse than its situation without the agreement.	The debtor's consent shall be considered to have been given if, until the hearing of the ratification application, the debtor has not filed an intervention against the acceptance thereof.
Article 54§4 of Law 4738/2020 (A 207)	The consolidation agreement cannot be ratified if it is likely that the cease of payment shall not be eliminated thereby.	
Article 54§5 of Law 4738/2020 (A 207)	In the event that all information documenting the validity of the application has not been submitted or in the event that it finds that the consolidation	

	agreement should not be ratified, the court may, instead of rejecting the application, set a deadline to submit documents, provide clarifications or amend the consolidation agreement. Such documents or clarifications or amendment should be submitted by the deadline set by the court, which cannot be more than twenty days.	
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This decision shall be published in the Government Gazette.

**THE MINISTER OF JUSTICE
KONSTANTINOS TSIARAS**

**True copy
The Head of the Secretariat Department**

Georgia Skorda

*Athens, 22.03.2021
True translation from Greek
The translator Eleni Dimitriou*