

KEY CONSIDERATIONS FOR STRUCTURING AND MANAGING NPL PORTFOLIOS IN GREECE

your **LEGAL PARTNERS**

DRACOPOULOS & VASSALAKIS LP

19 November 2018

Greek banks are under significant pressure to dispose their non-performing assets. They can choose between Greek Securitization Law and NPL Law to sell massively their loans. Greek Securitization Law is expected to gain ground in view of rumored future developments in the Greek NPL market.

In any case, after the acquisition of the loan portfolio comes the recovery process which determines the success of an NPL transaction. Various risks can be hidden in both consensual and legal recovery. Despite the recent reforms towards an investor-friendly legal framework, certain debtor-protection rules still pose challenges for investors.

**Loan portfolio
acquisition**

page 2

Routes to recovery

page 4

**Delays & risks in
enforcement**

page 6

**Reform towards an
investor friendly legal
framework**

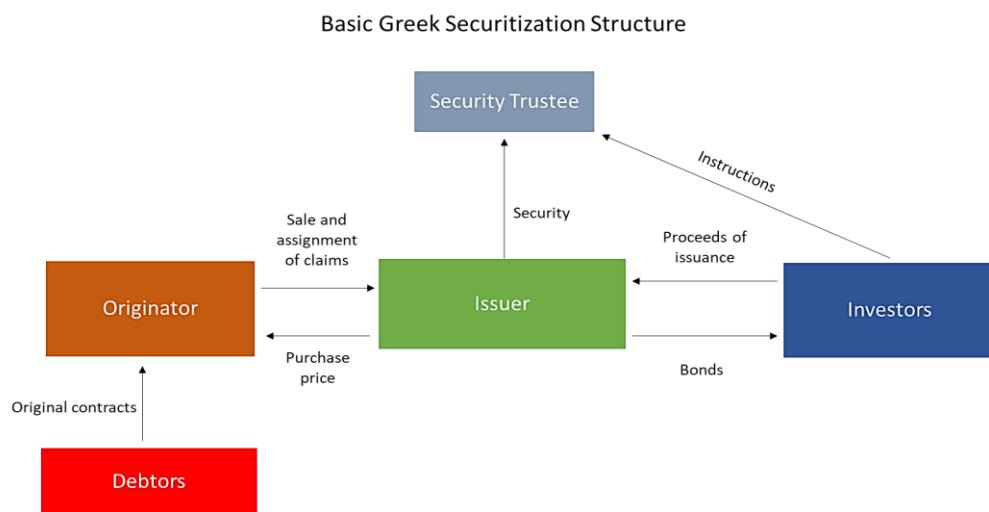
page 8

A. Loan portfolio acquisition

Greek systemic banks face significant pressure from supervisors (i.e. the SSM) to cleanse their balance sheets of NPLs. The goals set by supervisors are quite ambitious and demand prompt and bold action. To this end, Greek banks can choose between the new Law 4354/20151 (the so called “NPL Law”) and the pre-existent securitization framework, i.e. the Greek Securitization Law (Law 3156/2003), to dispose their non-performing assets. The choice of the applicable legal framework depends

largely on the objectives of the banks and the type of loans consisting the portfolio.

As regards the deal structure, the choice of the Greek Securitization Law means that an SPV has to be established which shall issue and offer, by private placement only, any kind of bonds, the repayment of which is to be funded by (a) the proceeds of the transferred claims or (b) loans, credits or financial derivative agreements.



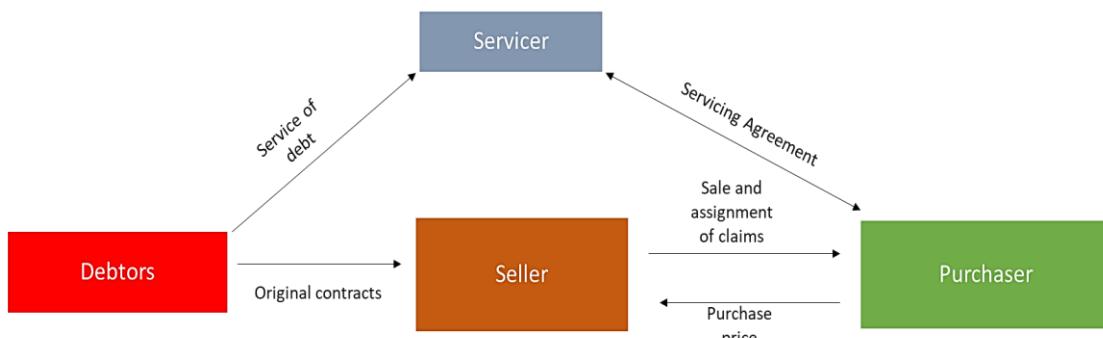
On the other hand, should the NPLs be disposed under the new NPL Law, the creation of an SPV and the subsequent issuance of bonds are not required. An operating entity, whose statutes should have among their business objective the acquisition of claims from loans and credits, can be the purchaser/assignee of the claims.

Regarding potential threats and obstacles in the recovery process, the protection of securitization structure from servicer's/bank's insolvency, as well as from any claw-back risk, consist distinct advantages compared to the NPL Law structure.

Moreover, under NPL Law, in order for a sale and transfer of NPLs to be valid, banks are required to offer to co-operating debtors the possibility to settle their claims 12 months prior to the sale. They are also required to notify debtors about the portfolio sale.

Securitization Law does not set such requirements and the registration of the portfolio sale to the pledge registry is sufficient.

“Greek banks can choose between the new Law 4354/20151 (the so called “NPL Law”) and the pre-existent securitization framework, i.e. the Greek Securitization Law (Law 3156/2003), to dispose their non-performing assets.”



“Greek lenders are expected to use Greek Securitization Law, especially for mortgage NPLs, in order to benefit from segmentation of loans in different tranches...”

Under Securitization Law, as servicer can act a credit or financial institution operating in the EEA, the originator or a third party, provided that the latter acts as guarantor of the receivables or was assigned with the servicing of the loans prior to the transfer. With regard to securitization of consumer loans, the servicer is required to have an establishment in Greece.

On the other hand, according to NPL Law, the servicer can be either a Greek SPV in the form of a Société Anonyme whose exclusive business objective shall be the management of loans and credits or a company domiciled in any other EEA country operating in Greece through a branch office with a business objective to manage loans and credits. In both cases the servicer shall be licensed by the Bank of Greece.

Servicing companies acting within the framework of NPL Law have to follow the same debtor protection requirements as banks. The same requirements apply to securitization deals given that in most cases the originators (i.e. the banks) act as servicers. Accordingly, any discussion about servicers in securitization transactions acting outside the scope of NPL law is of limited scope and mostly theoretical.

From a commercial point of view, Greek lenders are expected to use Greek Securitization Law, especially for mortgage NPLs, in

order to benefit from segmentation of loans in different tranches of issue on a risk basis. In this way, they expect to achieve higher consideration for NPLs with high security coverage and recovery ratios, which shall comprise the senior tranche, compared to a sale under NPL Law.

Additionally, the possible launch of an Asset Protection Scheme proposed by Hellenic Financial Stability Fund (a state guarantee scheme aiming to enhance the rating and the attractiveness of the senior tranche of bonds

whose underlying assets are NPLs) is also expected to facilitate the sale of 'good NPLs' in higher prices through securitization structures. The use of securitization structures would also be relevant in the case of the Bank of Greece proposal for the transfer by the Greek banks'

of about half of their deferred tax claims against the Greek State to a special purpose vehicle, which would then sell bonds and use the proceeds to buy approximately €42 bn. of NPLs from the originators at market prices. After all, securitization is a tested tool in the Greek market.

However, it involves higher costs compared to an NPL deal structure, whilst the adequacy of recoveries for covering investors' repayment and costs should be ensured.

B. Routes to recovery

I. Consensual recovery: Code of Conduct

The provisions of the Code of Conduct, an outline for general principles of behaviour and best practices between banks and debtors aiming to reach settlement taking into account minimum cost of living, shall apply to all supervised institutions that provide any type of credit in Greece, including branches of foreign credit institutions, as well

as to servicing companies under NPL Law.

The fact that the Code of Conduct does not make specific reference to Securitization Law does not make it irrelevant for securitization transactions, since in most cases banks act as servicers in securitizations and the process of the Code of

Conduct should be followed accordingly.

According to NPL Law, servicers assume the Code of Conduct process from the stage reached immediately before the transfer without the need to repeat any previous stages already completed by the Seller.

The following categories of claims are exempted from the scope of the Code of Conduct

Claims arising from loan agreements that had already been declared in default prior to 01.01.2015;

Claims against Debtors that have already filed a court petition for being submitted to the protective provisions of Greek Law 3869/2010 (known as "Katseli law") on indebted households, provided that a hearing date has already been arranged by the court; and

Claims against Debtors under dissolution or facing pending legal proceedings initiated by third party creditors.

II. Legal recovery

Under Greek law, enforcement is a judicial procedure leading to the liquidation of the debtor's assets through public e-auctions. Subject to abiding with the process of the Code of Conduct the banks may terminate the loan agreement by serving an extrajudicial termination notice to the debtor and guarantor and submit the application for a payment order to the competent Court

of First Instance. The Court issues an order for payment to be served on the Debtor (within two months after its issuance) together with a demand for immediate payment. Three business days after serving the payment order and demand, the auction process may start, unless the debtor proceeds with one of the actions provided by law in order to delay the liquidation of its property.

Theoretically, enforcement process may last from 10 to 16 months. In practice, though, this time period may be prolonged, depending on the success of the various defenses that the debtor may exercise, as analyzed below.

Another route for legal recovery might be out of court (Greek law 4469/2017 for debts out of business activity

and Katseli law for readjustment of overdue debts of individuals) or court restructurings and insolvency proceedings.

“Theoretically, enforcement process may last from 10 to 16 months. In practice, though, this time period may be prolonged, depending on the success of the various defenses that the debtor may exercise”

C. Delays and Risks in enforcement

A Debtor may delay enforcement on the relevant property by contesting either the order for payment or/and the enforcement process:

**Annulment Petition
(Articles 632 and 633 of the
Greek Code of Civil
Procedure - GCCP)**

A Debtor can file a petition of annulment against the order for payment before the competent Court of First Instance within 15 business days) from service of the order for payment, contesting the substantive or procedural validity of the order of payment.

**Suspension Petition
(Article 632 of the GCCP)**

The filing of an Article 632 Annulment Petition entitles the Debtor to file a petition for suspension of the enforcement against the relevant property. Enforcement procedures may be suspended until the hearing of the Article 632 Suspension Petition or until the competent Court has issued an official decision in respect of the Article 632 Annulment Petition or in case an appeal is filed until the decision of the Court of Appeal is issued.

**Annulment Petition (Article
933 of the GCCP)**

The Debtor may file before the relevant competent Court of First Instance a petition for the annulment of certain actions of the foreclosure proceedings based on reasons pertaining to the validity of the order of payment, the claim to the satisfaction of which the enforcement proceedings have been initiated and/or procedural irregularities.

**Appeal (Article 937 of the
GCCP)**

The filing of an appeal against the decision of the competent Court of First Instance in respect of the Article 933 Annulment Petition entitles the Debtor to file a petition for the suspension of the enforcement until the Court of Appeal (or the Single Member Court of First Instance acting as a Court of Appeal, as the case may be) reaches a final decision; such suspension may be granted if the Court considers that the appeal is likely to succeed and the Debtor would suffer irreparable damages. It should nevertheless be noted that such suspension is more difficult to obtain if the competent Court of First Instance has already rejected an Article 632 Suspension Petition based on similar reasons.

**Suspension Petition
(Article 1000 of the GCCP):**

Suspension of the auction for up to six months may be sought by the Debtor pursuant to Article 1000 of the GCCP, on the grounds that there is a good chance of the Debtor being able to satisfy the enforcing party or that, following the suspension period, a better offer would be received at auction.

**Postponement of the
Auction (Article 954 GCCP)**

The debtor may seek postponement of the auction by claiming that the value of the property has been underestimated or that the fixed first offer is too low at the latest fifteen days prior to the auction date. The relevant court decision should be issued by 12.00 pm eight days before the auction date.

Protection of the primary residence (the Katseli law): Enforcement proceedings on an individual's primary residence may also be suspended under Katseli law. Katseli law regulates the readjustment of overdue debts of individuals that do not have the ability to be declared bankrupt pursuant to general bankruptcy provisions under Greek legislation. The law provides for out-of-court and

judicial settlement procedures aiming to enable such individuals to develop, in agreement with creditors holding at least the majority of the overdue debts, a plan to repay their debts in the course of time. Nowadays it is estimated that Katseli law protects around 220k debtors for c. €18 bn of NPLs.

The debtor, under certain circumstances, may also apply for the exclusion of his/her main residence from liquidation. As of today, the most important effect of this law to creditors is the suspension of the enforcement of mortgage assets, while the Court examines if the debtor complies with the requirements of the law.

Specifically, for petitions filed from 1 January 2016 onwards, the debtor may, until 31 December 2018, apply for the exclusion of his/her main residence subject to the following requirements each being met:

The debtor's family monthly income does not exceed the "reasonable living expenses" of the debtor and his family, plus 70 per cent thereon;

The "objective" value of the residence does not exceed €180,000, increased by €40,000 for married debtors and by €20,000 per child up to three children;

The debtor is a co-operating debtor within the meaning of the Code of Conduct.

As long as the application of the debtor is examined by the Court, no disposal of the debtor's assets is permitted. It is highlighted that according to the law, as in force, debtors can apply for protection in accordance with its provisions until 31.12.2018. Upon this date, no more applications will be acceptable.

Katseli law has been amended several times by today and it is expected to be further amended within the next year for the benefit of creditors. Such amendments, which are still under discussion, focus on preventing debtors from seeking abusively the protection of the law as well as probably lowering the threshold of the objective value of the protected residence.

"As long as the application of the debtor is examined by the Court, no disposal of the debtor's assets is permitted."

D. Reform towards an investor-friendly legal framework

The Greek government has recently taken major steps to accelerate the enforcement process and increase investors' returns. **Specifically:**

Ranking of creditors

The ranking of creditors in the distribution of auction proceeds has been substantially improved:

Under arts. 975-978 of GCCP, after the deduction of the enforcement expenses, creditors are classified and their claims are satisfied as follows:

| | General Privilege Creditors (State, Social Security Funds etc.) | Secured Creditors | Unsecured Creditors |
|---|--|--------------------------|----------------------------|
| All types of creditors | 25% | 65% | 10% |
| No General Privilege Creditors | - | 90% | 10% |
| No Secured Creditors | 70% | - | 30% |
| No General Privilege and Secured Creditors | - | - | 100% |

Note: This is a base-case scenario and does not consider any special privilege claims (e.g. medical and funeral expenses of the debtor and his family, expenses for the necessary food of the debtor and his family, employee salaries, educator claims, lawyers' fees, claims of farmers from the sale of agricultural products etc.)

The provisions of GCCP on creditors' ranking are considered mandatory (*ius cogens*) and may not be amended through relevant contractual arrangements.

It is highlighted that an even more favorable ranking for secured creditors applies in respect of new claims created as from 17 January 2018 onwards.

Claims secured through a mortgage or mortgage prenotation over the property which was not subject to any encumbrance as at 17 January 2018 shall enjoy first rank priority.

E-auctions

Following the recent amendments of the GCCP, as from 21 February 2018 onwards, the auction takes place exclusively through the use of electronic means, in particular through the use of the electronic auction platform (e-auctions.gr). The

introduction of e-auctions was essential to reboot enforcement proceedings, which were strongly delayed by activists protests and lawyers and notaries strikes. Since its application, the number of e-auctions has risen sharply. Public e-auctions ensure transparency

in the selling process and allow to save significant time and cost in the enforcement procedure.



Unsuccessful auctions

If no bidder appears at the auction, the immovable property is awarded at the minimum auction price to the claimant, i.e. the NPL purchaser or the securitization SPV upon the latter's request. In absence of such request, a repetitive auction takes place within 40 days. In case the second auction is also unsuccessful, the competent court upon request of anyone having legal interest may order the conduct of a third auction within 30 days

at the same or reduced price or allow the sale of the property to the person who initiated the enforcement or a third party at a price determined by the court. If such auction or disposal is still unsuccessful, the court, upon request of anyone having legal interest may rescind the seizure or order another auction at the same or further reduced price. The new legal framework has contributed significantly in facilitating the satisfaction of creditors.

However, the protection of primary residence has been a subject of political conflict between Governments and opposition parties since the beginning of the Greek crisis. This controversial issue, coupled with the current pressure from creditors for total liberalization of auctions, create areas of political confrontation in the near future. In any case NPLs in Greece continue to raise opportunities and threats for players of the market.

**If you wish to discuss the topic further,
please contact**

Yiannis Palassakis

Katerina Christodoulou

Alexandros Georgiou

Evita Oikonomou

Our strategic alliance of law firms **Your Legal Partners** and **Dracopoulos & Vassalakis LP** will continue to share news about legal developments and proposals for legal solutions with clients and friends.