

NPLs – Legislation, Background & Reforms

Prof. Charoula Apalagaki, Secretary General
Hellenic Bank Association



Greek Banking system and financial crisis 2008

- During the financial crisis of 2008 the Greek banking sector has been granted with limited state aid, which has had rather a proactive character.
- Three pillars of the law 3723/2008 (i.e. limited capital infusion, through the issue of preferred shares for the benefit of the state, up to the amount of 5 billion). **These amounts have been totally repaid.**
- The state established also a guarantee scheme for Greek banks so as to maintain credit expansion. Aside from their exposure to Greek sovereign debt, credit institutions were not exposed to other serious risks at the onset of the crisis.

Legal environment at the onset of the crisis

- Before the crisis, the NPLs average ratio for the Greek banking system **was at relatively low levels.**
- Greece had an effective legislative framework for the collection of debts, both through collective enforcement proceedings (bankruptcy) and individual enforcement according to the provisions of the civil procedure code, one of the most updated in Europe.
- Banks employed also effective legal tools for enhancing their liquidity through the securitization of high quality assets (Law 3156/2013).
- **The Greek banking sector had undertaken normal business risks and operated in a secured and efficient legislative environment allowing for the effective management of NPLs.**

2009 – 2015: Legal Restrictions in the active management of NPLs

- The Greek Financial Crisis had a profound impact on legislation and judicial practice in Greece.
- High unemployment rates, reduced business activity and rising social exclusion led successive governments to establish and maintain horizontal measures for the protection of households and business from enforcement.
- For the first time, the Law curtailed the ability of credit institutions to enforce their claims. **Practically, the State imposed a moratorium on all enforcement measures.**

2009 – 2015: Legal Restrictions in the active management of NPLs (cont.)

- Although the State had stepped in to protect the capital basis of Greek banks and had spent an amount of about 27 billion € for their recap from 2012 to 2015, the law continued to restrict the right of the banks as creditors to proceed with enforcement proceedings.
- For instance from June 2009 up to the end of 2014 banks were not permitted to seizure and sell via auctions proceedings assets immovable up to the amount 200.000 euros.
- Additionally, the Law 3869/2010 (“Katselis Law”) for the bankruptcy of individuals, a new process similar to that of the US Chapter 13, was applied to the effect of providing a blanket moratorium on enforcement, without any eligibility criteria.

2009 – 2015: Legal Restrictions in the active management of NPLs (cont.)

- Law 3869/2010 led to serious procedural delays, requiring years for the resolution of pending cases. In the meantime, debtors were given generous freezing injunctions from enforcement measures.
- The payment culture has been seriously undermined. Moreover, banks and borrowers ceased to operate as contractual parties became litigants.
- Although the primary intention of the law was to protect weak borrowers its long application has caused serious deficiencies in the judicial system, and has created a wave of strategic defaulters.
- Under these (legal) circumstances, the significant increase of NPLs was inevitable.

2015. The peak of NPLs, the “wake up” of the legislation

- In September 2016 NPLs reached the amount of 78,3 bn.
- They have to be reduced by 38,6 b by Dec 19 (-51%).
- Strict operational targets were imposed. The NPLs that had been created for longer than 6 years, have to be drastically reduced within 3years.
- **Do we have the tools in place;**

Law 4354/2015

- Law 4354/2015 enables the sale and servicing of NPLs.
- In general, it is a modern law, enabling effective deleverage and active management of assets.
- Lawyers, judges, consultants and all other involved parties should take care to become familiar with the provisions and application of the new Law.
- Securitisation (under the provision of Law 3156/2003) could also be employed for deleveraging purposes, as an alternative to Law 4354/2015.

New enforcement tools - Bankruptcy

- **Do the investors and the services have access to the new tools;**
- In general, the legislation provides two tools for the management of NPLs. The first one is the collective enforcement of creditors (under the provisions of bankruptcy law). It is regulated by the law 3588/2007 as further reformed by the laws 4446/2016 and recently by the law 4472/2017, which further facilitates the liquidation proceedings for the small enterprises.
- In Greece the weak point of bankruptcy is the length of court proceedings, and the poor results of liquidation efforts, which in certain circumstances cannot even cover the expenses of the procedure.
- Recent law reforms are expected to address these deficiencies.

Liability against officials and bank officers

- Law 4472/2017 has also defined (art 65) the terms for the establishment of liability against officials and bank officers, who are in charge with the restructuring of public and private debts.
- The two groups of officers are released from any penal, or civil liability, if the restructuring is objectively acceptable and does not violate applicable regulations.
- The existence of these terms has to be established by a three members committee, consisting from judges of the appeal court.
- The new provision is intended to facilitate debt restructurings without the fear of criminal or civil liability against credit officers or public officials participating in these decisions.

Out of Court Workout (OCW)

- The law 4469/2017 has enhanced the out of the court proceedings and work outs for the small, medium and large companies, by utilizing the pool and skills of certified mediators, and by asking the creditors (both of the private and public sector) to proceed with a holistic restructuring of the debts.
- The main features of the Law are the objective criteria for assessing the eligibility and viability of the debtor, the adoption of the principle of No-Creditor-Worse Off and the restructuring of debts according to the debtor's capacity to pay.

E-Auctions

- The Law 4472/2017 has introduced the e auctions, giving to the creditor the alternative to proceed via a physical or an e auction.
- The new rules have been applied for the first time at the end of November 2017.
- The deficiencies of implementing physical auctions have led to the completed replacement of the later by e- auctions proceedings (new and pending) to e auctions starting from the 21.2.2018 (see new articles 207 - 208 of the recent Law 4512/2018).

New rules for the ranking of creditors

- Law 4512/2018 (articles 176 and 177) enhances the ranking of secured creditors, with pledges on movable and immovable assets, but its application is limited only to new financing and the new pledges acquired after **18.1.2018**.
- Creditors and servicers submitted to the law 4354/2015 are protected by the same provisions.
- The new rules concerns only new money (“new loans, new collaterals”), but also new money provided under restructuring agreements.



Thank you!