Greek NPL market snapshot

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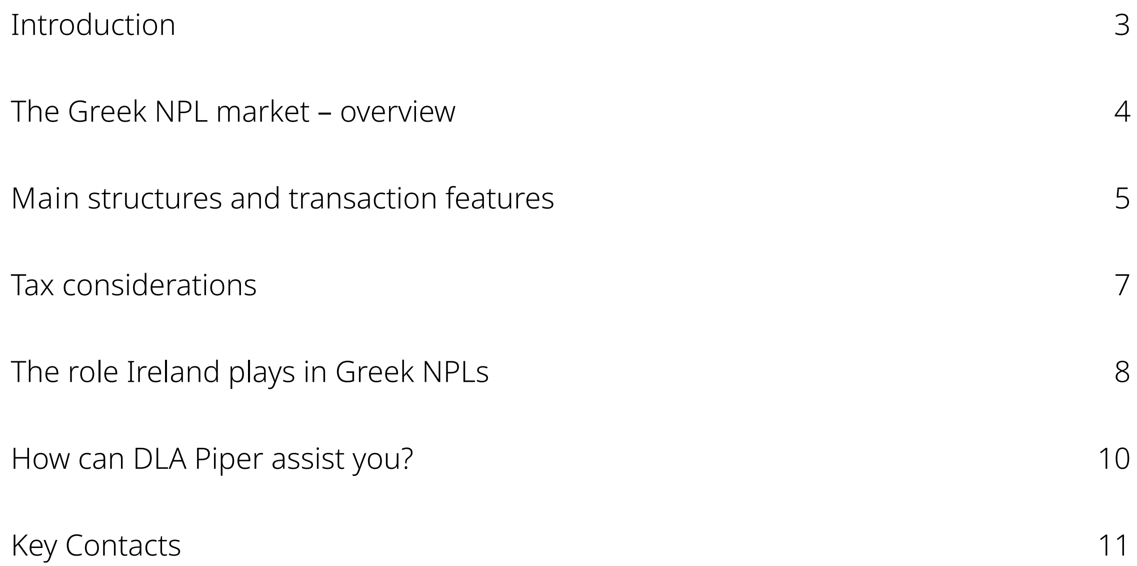

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Introduction

In the aftermath of the financial crisis, non-performing loans (NPLs) have been a major concern for supervisors, policymakers and market participants across the EU. Volumes of non-performing loans of European banks have significantly reduced since 2015, according to the European Banking Authority's (EBA) report on NPLs, *Progress Made and Challenges Ahead*, published in November 2019 (the Report), and such reduction is mostly attributed to NPL sales and securitisations.

The severe economic shock caused by the COVID-19 pandemic and the exceptional measures that the public authorities at Union and Member State level have taken to support solvent undertakings to withstand the liquidity shortages have demonstrated the need for banks to be able to continue lending to SMEs. It is crucial to upgrade any existing tools and prepare new ones to allow banks to maintain and further enhance their capacity to make more credit available to the real economy; securitisation can form a key tool in this respect.

The European Commission announced on 24 July 2020 a Capital Markets Recovery Package as part of the Commission's overall COVID-19 recovery strategy, proposing *inter alia* targeted amendments to Regulation (EU) 2017/2402 (the Securitisation Regulation). The aim of the proposed amendments is to encourage the use of securitisation as a tool to reduce the burden of NPLs on banks' balance sheets, considering that non-performing exposures are expected to increase due to the COVID-19 crisis.[1] These proposals are largely based upon the relevant analysis carried out by the EBA in 2019[2] and 2020.[3]

The Greek NPL market has also been affected by the magnitude of the economic decline that the pandemic has caused in the EU. Due to COVID-19, it is expected that this last quarter of 2020 and into 2021 will result in even more NPLs.

1 European Commission's Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/2402 laying down a general framework for securitization and creating a specific framework for simple, transparent and standardized securitization to help the recovery from the COVID-19 pandemic, COM(2020) 282 final.

2 Opinion of the EBA to the European Commission on the Regulatory Treatment of Non-Performing Exposure Securitisation, 23 October 2019.

3 Report on STS Framework for Synthetic Securitisation under Article 45 of Regulation (EU) 2017/2402, 6 May 2020.

The Greek NPL market – overview

Under the ever-increasing financial instability and the ongoing economic crisis in Greece that began in 2008, the need to sanitise Greek systemic banks' balance sheets by dealing with NPLs is a major priority for the country's banking sector.

The Greek government introduced a legal and regulatory framework for the transfer of NPL portfolios. The NPL Law (Law 4354/2015) was introduced initially to develop a secondary market in NPLs, but this has been expanded to capture the servicing and the acquisition of all types of bank credit receivables. Furthermore, in December 2019, the Greek Parliament enacted Law 4649/2019, a milestone in the Greek NPL market, which established the Greek government's guarantee scheme, its aim being to further support the reduction of NPLs through the Hercules Asset Protection Scheme (HAPS). The European Commission approved the scheme, stating that it does not involve state aid within the meaning of EU law, on the basis that the Greek state will be remunerated in line with market conditions for the risk it will assume by granting a guarantee on securitised NPLs.

According to the Report, Greece holds one of the highest NPL ratios in the EU, peaking at 47.1% in September 2016; however, Greek banks have, by deleveraging their balance sheets, reduced their NPL balance by EUR35 billion or 30% up to June 2019. Due to the HAPS scheme, 2020 was expected to be an active year in the Greek NPL market; however, the COVID-19 pandemic is expected to increase the stock of NPLs.

On 31 July 2020, the Greek government introduced Law 4714/2020 (A' 148), a comprehensive set of fiscal measures aimed at supporting businesses – particularly SMEs – and households in response to the COVID-19 pandemic. This resulted in the legislative acts of 30 March 2020 (A' 75). The legislation provided:

- Businesses that have been severely affected by COVID-19 were offered the option to suspend the repayment of principal on bank loans which were performing as of 31 December 2019, until 30 September 2020.
- Individuals that were eligible for the special COVID-19 compensation may suspend the repayment of their loan instalments for a period of three months.
- Under the Bridge (*ΓΕΦΥΡΑ*) scheme, the Greek state provides a type of state subsidy, for a period not exceeding nine months commencing from the date of approval of the relevant application, as a contribution to the repayment of mortgage loan instalments in cases where the loans are secured against the debtor's principal private residence; the scheme distinguishes between loans that are non-performing up to 90 days and those that are non-performing over 90 days, and sets forth different conditions accordingly.

Despite this collective effort to support SMEs and households, the economic impact of the containment measures and the unemployment rate which is expected to increase to 20% in 2020, may reverse the recent (before COVID-19) improvements in poverty rates.[4] In response to the COVID-19 pandemic, the four systemic banks announced an adjustment of their strategies. In particular:

- **Alpha Bank SA** announced its intention to proceed with the sale of its NPL portfolio with a EUR12 billion securitisation (Project Galaxy). This is expected to take place by the end of 2020.
- **Piraeus Bank SA** has applied for the HAPS scheme to securitise EUR7 billion of residential and commercial NPLs (Project Phoenix and Vega), once the conditions allow. Due to the COVID-19 pandemic almost EUR3 billion NPLs are expected to burden the bank's balance sheet.
- **National Bank of Greece SA**, **NBG** is preparing to launch securitisations under the HAPS scheme in excess of EUR6 billion, as soon as the market conditions improve.
- **Eurobank SA** has completed Project Cairo and Project Pillar, discussed later in this document.

4 Communication from the Commission, Enhanced Surveillance update – Greece, May 2020, COM(2020) 529 final.

Main structures and transaction features

The NPL law provides for the transfer and management of debt receivables from loans and credits that have been granted by credit or financial institutions, when these loans or credits are non-performing. As per article 1 par. 1(d) of the NPL Law, the implementation of the provisions contained therein does not affect the implementation of the provisions of Law 3156/2003, i.e. the so-called Securitisation Law. In particular, with respect to the transfer of receivables for the purposes of securitisation, this transfer is governed exclusively by the provisions of the Securitisation Law, regardless of whether the portfolios to be securitised include non-performing receivables or not.

Hence, the following transaction structures and features are used in the transfer of NPLs:

Sale and transfer of loans and credits

THE TRUE SALE TRANSFER

The sale and transfer of NPL loans and credit receivables can be done either under the NPL Law or the Securitisation Law. Parties can choose either, having considered the particulars of the transaction.

- Pursuant to article 1 par. 1(b) of the NPL Law, claims arising from loans or credits which have been granted by any credit or financial institution in Greece may be sold and transferred to acquiring entities (Credit Acquiring Companies, *Εταιρείες Απόκτησης Απαιτήσεων από Δάνεια και Πιστώσεις*), by virtue of a relevant written sale and transfer agreement. The law requires, as a condition precedent to the validity of the sale, a prior extrajudicial invitation to be delivered to the debtor and the guarantor – within 12 months prior to the offer to sell – proposing to settle their liabilities on the basis of an appropriate settlement scheme. The sale and transfer agreement is also subject to formalities, as provided for by article 1 par. 3 of the NLP Law (i.e. it should be registered in the public book of Law 2844/2000). The transfer of claims are valid, to the extent that a servicing agreement has been concluded between the Credit Acquiring Company and a Servicer of Loans and Credits, duly licensed and supervised by the Central Bank of Greece.
- The sale and transfer of loan and credit receivables can also take place via the Securitisation Law. As per article 10 of the Securitisation Law, this sales process is a true-sale of a portfolio consisting of loan and credit receivables, whether existing, future or conditional, as well as any formative or ancillary rights, and including all amounts of interest, fees and costs payable by the debtor in connection with a transferred asset. The transfer agreement of the securitised receivables should be registered in the public book of Law 2844/2000, which also qualifies as the notification for the assignment of the claims.

THE CREDIT ACQUIRING COMPANIES

Under the NPL Law, the Credit Acquiring Companies should be either:

- a Greek company organized and existing in the form of a *société anonyme*, incorporated in Greece and registered to the Business Registry (GEMH), and which, according to their articles of association (statutes), should have among their business objective, the acquisition of claims from loans and credits; or
- a company domiciled in any other EEA Member State (the Irish Section 110 Company satisfies this criteria – discussed further below); or
- companies having their registered seat in a third country, excluding those domiciled in states having a favourable tax regime or in non-cooperating countries.

The Securitisation Law defines the "acquiring entity" a *société anonyme* having as its exclusive objective the acquisition of claims for the purposes of securitisation; if the *société anonyme* is incorporated in Greece, it is subject to the provisions of Greece's Law of the *société anonyme*, (Law 4548/2018). It is noteworthy that article 15 par. 2 of Law 4548/2018 sets as the minimum share capital of the *société anonyme* the amount of EUR25,000. As it will be further illustrated below, the minimum share capital requirement along with the lack of flexibility in the incorporation of Greek SPVs has resulted in Irish Section 110 Companies being a more favourable acquiring entity in Greek structured finance transactions; investors are now familiar with using Irish Section 110 Companies and the well-established company law position in Ireland.

Servicing of loans and credits

THE SERVICING AGREEMENT

The servicing of claims arising out of loans and credits that have been granted by any credit or financial institution in Greece falling within the scope of NPL Law may be assigned only to special purpose entities, (Credit Servicing Companies, *Εταιρείες Διαχείρισης Απαιτήσεων από Δάνεια και Πιστώσεις*). The servicing is assigned on the basis of a written agreement which should include at least the following:

- A description of the claims that are assigned and the status of their non-performance;
- A description of the specific servicing actions that shall be carried out, including indicatively the legal and accounting monitoring, the debt collection, the negotiations with the debtors or the conclusion of settlement agreements; and
- The servicing fee, which in any event cannot pass on to the debtor.

CREDIT SERVICING COMPANIES

Under the NPL Law, the servicing of NPL portfolios is a highly regulated business. For the purposes of exercising their servicing activities, the credit servicing companies should be granted a special operating license from the Central Bank of Greece, which – as the supervisory authority – ensures compliance with any licensing and supervisory requirements.

The credit servicer should be either:

- a Greek company organized and existing in the form of a *société anonyme*, having as its exclusive business purpose the servicing of such loans and credits; or
- a company, registered in any other European Economic Area (EEA) Member State, which is legally established and operates in Greece through a branch office.

In order to grant new loans and credits to debtors so as to facilitate refinancing of the loans they are servicing, the credit servicing companies are required to obtain an additional licence by the Bank of Greece. These loans and credits shall be deemed to be governed by Greek law and to fall under the exclusive competence of the Greek courts. The licence is subject to the following conditions:

- That the servicer has deposited EUR4.5 million as minimum share capital in a bank account of a Greek credit institution or a credit institution of an EEA country; and
- The servicer complies with the rules and decisions of the Bank of Greece.

Hercules Scheme on NPL Securitisation

The Hellenic Financial Stability Fund, which holds stakes in Greek banks, proposed the set-up of an asset protection scheme called Hercules, similar to the Italian GACS scheme. This is a crucial measure that may facilitate the de-risking process, as it can cover NPLs in excess of EUR20 billion. The key features of the Hercules scheme are the following:

- Banks shall sell an NPL portfolio to an SPV, which finances the acquisition of assets with the notes' proceeds.
- Each transaction is structured in such a way so as to include both senior and junior tranches of notes; the issuance of mezzanine notes is also an option. The state guarantee applies only to the senior tranche.
- The notes are required to be rated by at least one credit rating agency. The state guarantee shall be activated only if the rating of the senior tranche notes is not lower than BB-.
- An independent servicer shall be appointed by the SPV for the purposes of servicing the underlying NPLs of the portfolio.
- The Greek government guarantees the senior notes, covering any interest and the principal due for a certain premium. The interest rate on the issued notes can be fixed or floating, while the redemption structure is flexible.
- The Greek Government Guarantee shall not exceed EUR12 billion.

Tax considerations

The Securitisation Law sets forth provisions aimed at tax efficiency.

Indicatively, the Law provides for:

- The transfer and collection of the receivables, as well as the loans, credit agreements and the financial derivatives that the SPV enters into;
- The transfer of real property to and from the SPV and its re-transfer to the transferor/ originator; and
- The profits realised from the transfer of receivables, the execution of loans, credit agreements and financial derivatives, any collateral agreements or, under certain conditions, real property, to be exempted from any direct or indirect tax, duty, contribution, levy, right or other encumbrance, subject only to any applicable VAT or withholding tax and any charges that may be payable to the Securities Depositary of the Athens Exchange.

The role Ireland plays in Greek NPLs

Irish Section 110 Companies (Section 110 Companies or Section 110 Company as the context requires) have been used for almost two decades to acquire NPLs throughout Europe and the rest of the world. Section 110 is a reference to Section 110 of the Irish Taxes Consolidation Act 1997, which provides a specific tax regime for Irish tax resident companies that qualify for the regime. Section 110 permits such qualifying companies to engage in an extensive range of financing and leasing transactions in a broadly tax-neutral manner.

How a Section 110 Company can obtain tax neutrality on its profits

A Section 110 Company is liable to corporate tax at 25%. However, where proper structuring is put in place, it is possible to leave a Section 110 with negligible taxable profits (typically EUR1,000 which is required for a corporate benefit) which are then taxed at the 25% rate.

A company will qualify as a Section 110 if it, among other things:

- Is resident in Ireland;
- Acquires qualifying assets (which includes NPLs);
- Carries on in Ireland the business of the holding and/or management of qualifying assets; and
- Undertakes the first transaction resulting in the holding and/or management of qualifying assets for a value of not less than EUR10 million.

The Section 110 Company must notify the Irish tax authorities that it is a company which satisfies all of the Section 110 criteria.

Typically, debt is used to finance Section 110 Companies. There are no tax restrictions on what form of debt is used (i.e. whether the Section 110 Companies raises monies by means of a loan, the issue of notes or bonds). Interest payments (even those which vary with the Section 110 Company's profits) made by the Section 110 Company (on moneys raised to enable it to hold or manage qualifying assets) will be tax deductible (subject to certain conditions) and this is generally how the Section 110 Company achieves negligible taxable profits. Interest payments made by the Section 110 Company may be made free of Irish withholding taxes provided the recipient of the interest is tax resident in a country with whom Ireland has a double taxation agreement or, in a country with which Ireland has signed but not yet ratified a double taxation agreement or is tax resident in a Member State (other than Ireland) of the EU. Section 110 Companies can also take advantage of the quoted Eurobond exemption to pay interest gross. A quoted Eurobond is defined in the tax legislation as a security which is quoted on a recognised stock exchange[5] and carries a right to interest. Interest on Eurobonds may be paid free of Irish withholding tax if the paying agent is not based in Ireland or, if they are, the Eurobonds are held in a recognised clearing system. The Eurobond route is an attractive route for those Section 110 Companies wishing to raise finance from a wide range of persons resident in different countries.

Are Section 110 Companies regulated entities?

Section 110 Companies are, in almost all cases, unregulated (consequently they do not have expenses which attach to a regulated entity) and are also not considered to be AIFs (on the basis of Central Bank of Ireland guidance to the effect that FVCs, and other SPVs where economic participation is solely by way of debt, are not considered to be AIFs). AIFs are alternative investment funds as regulated by European Directive and FVCs are Financial Vehicle Corporations (Irish resident securitisation vehicles).

What type of company is a Section 110 Company?

Where the Section 110 Company is not targeted at retail investors, and where a listing is required then the company is established as a Designated Activity Company (DAC). To ensure insolvency remoteness (which is relevant to a senior noteholder, usually a third-party bank financing the SPV) the shares of the Section 110 Company are held by a share trustee who holds the shares on trust for charitable purposes. A DAC can be set up with an authorised share capital of EUR1 and it can be established in three-five working days. There are a number of companies in Ireland which provide corporate services to Section 110 Companies, such as providing a registered office, providing directors and company secretarial services and ensuring compliance with Irish company law.

5 Discussed further below.

Listing of securities on a recognised exchange

Issuers who decide to list and trade their debt have, in our experience, chosen to list in Ireland or Austria.

Issuers who decide to trade and list their debt in Ireland may choose between the Regulated Market or the Global Exchange Market (the GEM), each operated by Irish Stock Exchange plc, trading as Euronext Dublin (Euronext Dublin).

The GEM is an exchange-regulated market and Multilateral Trading Facility (MTF) as defined under MiFID II, which is aimed at professional investors. Listing on GEM is achieved through the publication of a listing particulars rather than a prospectus and this involves a direct submission to Euronext Dublin, which is responsible for approving listing particulars for the purposes of listing debt securities on the GEM. While the listing conditions and the document content/disclosure requirements of GEM are similar to those of the regulated market, Euronext Dublin can offer more flexibility than would be available for a regulated market listing.

Issuers who choose to list and trade in Vienna do so on the MTF of the Wiener Börse AG (the Vienna MTF). The Wiener Börse AG is the exchange operating company which operates in continuation of the unregulated third market according to § 69 of the Austrian Stock Exchange Act as amended by the federal act as amended by Federal Law Gazette I no 19/2007. Listing on the Vienna MTF involves submission of an information memorandum (together with ancillary documents).

Both the GEM and the Vienna MTF are subject to the Market Abuse Regulation (Regulation (EU) No. 596/2014).

Our key experience

- Advising **Deutsche Bank** on the securitisation of PPC's non-performing receivables portfolio.
- Advising **Finacity** on the securitisation of PPC's performing receivables portfolio.
- Advising **PIMCO** and **QQuant** on the securitisation of EUR1 billion NPL portfolio of the Pancretan Bank.
- Advised **StormHarbour Securities LLP** as arranger and Autohellas S.A. (the second largest independent car leasing company in Greece and exclusive franchisee in Greece of US-based car rental group, Hertz) as originator on the securitisation of auto leases extended to Greek corporates and SMEs.
- Advising the **Engineers' and Public Contractors' Pension Fund (TMEDE)** on several issues of banking regulation in the context of its asset management transactions.

How can DLA Piper assist you?

DLA Piper has a very experienced NPL team both in Greece, Ireland and the UK[6] who can offer you their market experience to ensure you model the best structure when acquiring Greek NPLs. These teams have been involved in securitising a number of Greek NPLs on a seamless cross-border basis. Furthermore, DLA Piper Ireland has experience listing on both GEM and the Vienna MTF, which means that your project can be managed from initial structuring right through to listing by the cross-border team.

We would welcome the opportunity to discuss the above with you and address any queries you may have.

[6] In our experience investors and some lenders prefer English law as the governing law of the transaction documents.

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