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Securitisation

Greece: Trends & Developments
Zepos & Yannopoulos

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Trends and Developments

Contributed by Zepos & Yannopoulos

Zepos & Yannopoulos's Finance & Capital Markets team has rapidly grown into one of the largest finance-only desks in the market, establishing a strong reputation for 'first-of-a-kind' transactions, with an emphasis on financial institutions and cross-border deals. The team's work, whether transactional or regulatory, covers all reaches of financial actuality from debt and equity capital markets to general bank lending (corporate, infrastructure, real estate, restructuring, export) and from distressed debt investments to asset management. Structured finance is a particular area of expertise; the team's lawyers have an impressive track record in securitisation and covered bond transactions in terms of volume, asset class diversity and structural innovation. Other services include advising lenders, funds and investors at all levels of the capital structure as well as corporates, financial advisers, trustees, rating agencies, supranational organisations and regulators, catering for the full spectrum of participants in the financial markets.

Authors

Christina Papanikolopoulou is a partner and Head of the firm's Finance and Capital Markets Group. Her primary areas of practice are banking, capital markets and structured finance, with an emphasis on cross-border transactions. Her expertise covers initial and secondary equity offerings, tender offers, corporate bonds, high yield and general bank debt finance. Christina has worked on major private and sovereign debt restructurings and in recent years has focused on the sale/trading/management of distressed debt. She has worked on covered bonds and securitisations of bank-originated receivables, and has led her team of lawyers on the first commercial mortgage-backed transaction to have taken place in Greece. Additionally, she has experience on the regulation of financial institutions, especially on hybrid and other regulatory capital securities, both from a transactional and a regulatory perspective. Christina regularly advises investment banks, institutional investors and intergovernmental financial organisations, as well as domestic banks and financial advisers. She works with all major international law firms which are active in the field of financial transactions and with all relevant domestic regulators.

Kely Pesketzi is a senior associate at the firm. Her practice focuses on corporate lending and transactional banking and capital markets. She has experience in equity offerings, debt issuances, securitisations, covered bonds and other structured finance products. Her experience on debt and equity capital markets extends to both domestic and international practice, having worked in various types of offerings launched in accordance with EU and US securities regulations, both as local counsel and from the international counsel side. Kely has a strong track record in acting for both lenders and borrowers in various types of financing, such as project finance and real estate financing, export trade and corporate loans. She has worked on financing projects in an array of industries and has drafted and negotiated financing and security documentation in a variety of funding structures. Kely has practised, from the very introduction of Greek legislation prior to the BRRD, bank restructuring and resolution schemes.

Enacted in 2003, the Greek Securitisation Law (articles 10 and 14 of Law 3156/2003) is one of the very few Greek legislation texts that suffered almost no amendments from its introduction to date, despite the inherent trend of this jurisdiction of recurrent amendments and reinstatements of laws and regulations. Securitisation is a tool mostly used by Greek banks – initially (2003-2007) to raise funds from debt capital markets and then, when Greek investments were less attractive for the international financial markets, on a retained basis (2007-2016) for liquidity purposes. During this period, the Greek banking sector was reshaped; small and medium-sized banks failed and/or were absorbed by systemic players yet securitisations originated or serviced by such banks smoothly transitioned to their successors. When the first 'post-crisis' non-retained securitisations were launched in 2016 by two of the four Greek systemic banks, investor demand was so high that one of the deals was upsized. This brief history of the law and the market goes to show a simple truth about the Greek securitisation framework: it works.

With such a wealth of precedents and an established legal practice, one would expect that non-performing loan (NPL) transactions would largely rely on this type of structure for addressing the country's voluminous NPL stock (more than EUR100 billion in late 2015). However, the government introduced at the time a very restrictive framework (Law 4354/2015) which cherry-picked some of the features of securitisation and brought significant regulatory burdens upon buyers and servicers of non-performing exposures. A few months later, in June 2016, with no deals – or servicing licences – on record, the law was largely amended to reflect ongoing discussions between the Greek government, its sovereign lenders and market players actively seeking to clarify grey areas and simplify processes. By that time, the market was gearing up for the first NPL deals, but it took one final round of amendments in May 2017 on the NPL framework to kick-start transactions.

Throughout this process, it was a recurring argument of both market players and the country's sovereign lenders that securitisation remains an investment option for non-performing loans. Not only is the international investment community accustomed to the structure and concepts of a securitisation transaction, but the law itself has a series of legal benefits that weigh heavily when investing in this market. First of all, by operation of the securitisation law, a statutory pledge is created in favour of the securitisation creditors over the transferred receivables and the collection account, combined with a statutory negative pledge obligation of the purchaser with respect to these assets. The statutory pledge (as well as the transfer of the receivables) is immune from the claw-back effect of the bankruptcy of the seller and of the servicer. The pledged collection account is by operation of law segregated from the estate of the account bank and the servicer, subject to standard commingling risk, and it is also protected against bail-in on the basis of Article 44 paragraph 2 of the BRRD which excludes secured liabilities from the bail-in perimeter. A number of practical benefits are also offered by the Greek securitisation law, such as clearer tax regimes and lower registration costs, exemptions from the current capital controls restrictions and preservation in the name of the purchaser of any legal and enforcement privileges applicable to the selling credit institution.

To that effect, the Supplemental Memorandum of Understanding – executed on 16 June 2016 by the Greek government – included an undertaking of the Greek government to adopt amendments to Law 4354/2015 to (among others) to make clear that the securitisation framework is not affected by Law 4354/2015. To that effect, the Greek government passed Greek Law 4389/2016, pursuant to which paragraph 1(d) was added to Article 1 of Law 4354/2015 to read that "the provisions hereof do not affect the applicability of [the Greek Securitisation Law]". The explanatory report to the law introducing this clarification emphasises the need to establish a liquid loan sale market by providing investors with alternative tools to structure transactions.

Following these amendments, the market saw the first NPL securitisation transactions, asserting the applicability of the Greek securitisation law in this type of deal; all three closed precedents to date are securitisations backed by SME-secured portfolios. The first was launched and completed in 2017 by one of the medium-sized non-systemic institutions, while within 2018 two of the systemic banks securitised parts of their commercial-backed NPL stocks. The latter two transactions raised great investor demand, with a significant number of prominent international investors and distressed debt funds submitting non-binding bids in the early stages of each transaction. All three precedents combined both English and Greek law on the sale and securitisation leg of the transaction and assigned the servicing of the portfolio to licensed loan servicers under Law 4354/2015; such entities are by law designated as financial institutions and thus eligible to service securitisation portfolios. In that sense, the deal structures combined features from both legal frameworks.

The alternative sale structure, Law 4354/2015, is the prevailing choice for unsecured portfolios. Law 4354/2015 does not look at the financing side of the transaction. It merely regulates the sale and the servicing of the portfolio (whether performing or not), and as such it does not provide for ring-fencing or claw-back protection. The entire transaction (both the sale and the transfer) is governed by Greek law. The feature of Law 4354/2015 that has troubled the market most is the requirement of the law, as a condition precedent to the validity of the sale, for a prior invitation by the seller to the debtors to settle their liabilities on the basis of an "appropriate settlement scheme" within the 12 months preceding the offer to sell. Neither the concept of "appropriate settlement" nor the timing of an offer to sell is clearly defined in the law. In the six closed unsecured local precedents, banks dealt with this concept by addressing standardised DPO mass proposals to debtors which, in turn, investors factor-in when pricing an unsecured deal. The latest set of amendments to the law restricted the applicability of such requirement to co-operative consumers. Even for consumer portfolios, the legal debate as to whether this requirement cuts across the distinct application of the securitisation law versus law 4354/2015 continues, with both views being heard in the domestic market.

Going forward, we expect securitisations to continue to play a critical role in the Greek NPL market. The Greek systemic banks have announced in their latest financial results targets to reduce their NPE stock by 2021 by an average of around 20% from the current levels of around 40%. To that effect, regulators have proposed more drastic and comprehensive proposals for the market: the Bank of Greece has publicly proposed a solution using securitisation and the special deferred tax credit framework applicable on Greek banks while the Hellenic Financial Stability Fund has presented an Italian-style structure combining securitisation with state subsidy. Meanwhile, banks themselves are reportedly processing comprehensive solutions combining capital enhancement and NPL resolution; among those, only one has been publicly announced and combines the absorption by Eurobank of Grivalia Real Estate Investment Company with an NPL securitisation transaction and the sale of Eurobank's wholly owned licensed servicer, FPS.

An additional parameter to be considered is the relevance of the newly enacted Securitisation Regulation (2017/2402) and the Securitisation Prudential Regulation (2017/2401) to NPL securitisations in view of the new provisions bringing together under common rules more types of originators and asset classes.

Lastly, the first non-banking securitisation in years was successfully closed in the summer of 2018 (a securitisation of automotive lease receivables) which may pave the way for expansion of this product to the corporate universe. The participation of supranational investors (EIB, EBRD, Kfw) on the deal could be a sign that a new securitisation market may be emerging in the Greek jurisdiction.

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