



Ταμείο Χρηματοπιστωτικής Σταθερότητας
Hellenic Financial Stability Fund

Progress update of HFSF's study on NPL market impediments




June 2017

Background Information

- ❑ As per the provisions of the Memorandum of Understanding (MoU) signed on 19/08/2015 between the European Commission (EC), the Hellenic Republic (HR) & the Bank of Greece (BoG) the HFSF in cooperation with BoG, provided an analysis to identify non-regulatory constraints and impediments (e.g. administrative, economic, legal) to the development of a dynamic NPL market in Greece. During the study, impediments were identified, analyzed and grouped per broad category i.e. legal and judicial, tax and accounting, administrative and other. HFSF delivered the aforementioned study to the relevant stakeholders in October 2015.
- ❑ Subsequently and as specified in the Supplemental MoU signed on 16/06/2016, the HFSF, in cooperation with BoG updated the aforementioned study, and proposed concrete actions regarding all remaining non-regulatory impediments to the development of a dynamic NPL market. The updated study was completed, with the assistance of Potamitis-Vekris Law firm and the report was published on HFSF's web site in September 2016.
- ❑ In June 2017, HFSF prepared a progress update for the 9-month period since the publication of the study (Sep. 2016), where 44% of the identified impediments have been addressed, for 23% of the impediments some progress has been made or no information on progress made was available, while 33% of impediments have not been addressed.
- ❑ The views regarding the progress on the identified impediments expressed in this presentation, represent to the best of HFSF's knowledge, what has been legislated **up to 31/5/2017**. Any initiatives that are currently work in progress have not been taken into consideration. It should be noted that in several cases, the Authorities may have a different perception regarding the existence or/and of the progress made on some of the impediments.



Summary of Progress on Identified Impediments per Category

	Total Identified			
Legal & Judicial	41	18	5	18
Tax & Accounting	9	1	7	1
Administrative	8	7	1	-
Other	3	1	1	1
Total	61	27	14	20

Note that the number of impediments reported in the table above, refer to the total impediments identified in the HFSF's report. In this presentation only the major ones are presented.



Identified issue has been addressed



- Some progress has been made, but the issue has not been resolved
- No information on progress is available



Identified issue has not been addressed

Sentences or words highlighted in red throughout the presentation describe the identified impediment.



A. Judicial Impediments



The Ministry of Justice (MoJ) has acknowledged the need for further **training of judges**; seminars are held on household insolvency matters, while MoJ also seeks ways to enhance further judges' knowledge and familiarity with insolvency matters overall. However, this may only partially solve the **lack of judicial specialization**.

The insolvency implementation regime is inflexible and lacks an out-of-court mechanism for restructuring.



Law 4469/2017 introduces a framework for negotiations among enterprise debtors, public creditors, banks and other creditors. The new framework involves the setting up of a platform to facilitate exchange of information and communications among the parties, as well as co-ordination by a certified mediator.

The volume of cases contributes to major delays in the hearing process, while procedural rules delay the enforcement process, especially as per Law 3869/2010 (Katselis Law).



The recent amendments of L.4346/2015 appear to have set the basis for much improved efficiency in the enforcement process, however their implementation still remains a challenge.



B. Major Legal Impediments (1/2)

- ✓ Article 65 of the recently enacted L.4472/2017 addresses to a great extent the **liability of banks' restructuring personnel**.
- ✓ Recent amendment in Greek Bankruptcy Code (GBC) addresses satisfactorily the issue of **conversion of debt to equity** even without the shareholders' consent.
- ✓ Impediments identified in the GBC have been partially addressed through L.4446/2016, which **accelerates and simplifies** the course of procedures overcoming possible obstruction by uncooperative shareholders, **specifies the tasks of the insolvency administrator**, and **reduces the discharge period** of bona fide debtors to three years.
- ✓ Presidential Decree 133/2016, regulates the **profession of the insolvency administrator**, but there is still further regulation that has to be issued prior to the establishment of the profession.
- ✓ Regarding **NPL Transfers**, article 65 of L.4472/2017, set certain protections certain protections for decisions of bank officials to provide debt discounts and write-offs, in the context of a recovery agreement, as part of the OCW, in the context of special liquidation or the sale or servicing of loan receivables.
- ⊕ However, on **NPL Transfers**, no progress has been made in cases of abolishment of notification of individual debtors, the explicit exemption of the transfer from all tax, similarly to the provision of the securitization Law.
- ✓ An **Out-of-Court Workout (OCW)** procedure has been introduced through L. 4467/2017 and provides for a global settlement of debt (excluding small creditors up in the aggregate of 15% of total debt). However, there are concerns regarding IT platform implementation, as well as, whether the OCW will facilitate the enforcement of creditor rights and treat the issue of strategic defaulters efficiently.

B. Major Legal Impediments (2/2)



The recent amendment of the Code of Civil Procedure (CCP) through the Law 4335/2015, which is implemented since September 2016, still **permits the filling of an application to vacate after the asset has been attached or foreclosed** for the purpose of being put on forced sale raising issues related to the executory title.



The Law 3869/2010 provides that an applicant whose request was dismissed may re-apply after an interval of one year. Given the slow pace of enforcement proceedings (and the ability of debtors to move, to suspend, or vacate executor titles), the **interval seems inadequate and may lead to a vicious circle of repeated applications**, leaving little or no room to creditors to enforce their rights.



Different **Laws' harmonization** & alignment has not been addressed.



The **liability of the restructured company's interim management** appointed by creditors has not been addressed.



There is still no measurable improvement in Law's 3869/2010 implementation and the **backlog of pending applications**, remains extremely high (estimated to exceed 200,000 cases).



It is still **costly and time-consuming** to **declare a debtor in default** of its obligations under a court imposed scheme (it requires a new decision by the competent court) and therefore, there are inadequate incentives for compliance with Law 3869/2010.



Under L. 3869/2010, debtor's application results to the **suspension of interest accrual for the non-secured obligations**, which seems inappropriate given that the trigger is the unilateral action of the debtor; it is also unfair given the length of the proceeding and the cost incurred by the creditor.






C. Tax & Accounting Impediments

- ✓ L.4465/2017 addresses the issue regarding **tax losses** arising from sales of receivables to be carried forward and be offset against the taxable profits of each corresponding year.
- ? Continuous **revisions** and **changes in tax legislation** create an environment of uncertainty.
- ? Lift of any incentives to proceed to **force sale of property**.
- ? **Heavy taxation** on real estate property.
- ? **Tax on real estate property (ENFIA)** may not be altered since tax reforms have been agreed and will be implemented throughout the Economic Adjustment Programme.
- ? Issues related to **VAT discrimination** among initial and subsequent creditors have been partially addressed through L. 4389/2016.
- ? Cases of **unfavourable tax treatment** have been partially addressed through L.4389/2016 and L.4465/2017.
- ? Lack of accounting guidance **under IFRS 9** could delay **write offs**.
- ✗ **Tax regime** should not discriminate against NPL resolution. There should be a close alignment of tax treatment of provisioning, restructuring and asset sales with their treatment for regulatory and financial purposes; exemption of asset sales or transfers from VAT; and provisions to ensure that debt relief in "genuine" restructuring, does not attract income tax.

D. Major Administrative Impediments

- ✓ **Data & Documentation Quality** related Limitations could be partially addressed through the Credit Bureau.
- ✓ **Multi-bank credits** to be addressed through the OCW Law and the NPL Coordination Forum established by banks.
- ✓ A number of additional tools to be used by Banks **for restructuring purposes** have been developed.
- ✓ There are ongoing reforms for the improvement of the **property registration system**.
- ✓ An enactment amended the Code of Civil Procedure to introduce the long awaited **electronic auctions**.
- ⊕ Banks' **capacity** to process and **support** NPL resolution has been addressed to some extent.

E. Other

-  A relevant roadmap has been agreed between the Greek Authorities, for the relaxation of **capital controls**.
-  No progress has been made with respect to **changes** that need to be introduced in the **real estate market**, such as replacement of perceived “objective” values to market prices, high cost of ineffective property registration, etc.
-  Regarding the development of an **active platform for the NPL sales**, the Greek Authorities believe that this is the Banks’ responsibility.