Ταμείο Χρηματοπιστωτικής Σταθερότητας

Hellenic Financial Stability Fund

***"Second Update of HFSF's study on Non - Regulatory Constraints & Impediments for the development of an NPL market in Greece"***

April 2018

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## 1. Introduction

In October 2015 the HFSF completed and presented to the Authorities the initial analysis to identify non-regulatory constraints and impediments to the development of a dynamic NPL market in Greece. This analysis was specified in the provisions of the Memorandum of Understanding (MoU) signed between the Hellenic Republic, the Bank of Greece (BoG) and the European Commission on 19/08/2015.

Subsequently and as specified in the Supplemental MoU signed on 16/06/2016, the HFSF in cooperation with BoG, updated and proposed concrete actions regarding all remaining non-regulatory impediments to the development of a dynamic NPL market. The updated study was completed and the report was published on HFSF's web-site on September 2016.

In June 2017, HFSF prepared a progress report on HFSF study on NPL Market Impediments, which to the best of its knowledge, presented the current framework and what has been legislated up to 31/5/2017. This progress update was also published on HFSF's web-site.

The present analysis constitutes the second update of HFSF's initial study to identify major non-regulatory constraints and impediments to the development of a dynamic Non Performing Loans' (NPL) market in Greece. The purpose of this report is twofold:

a. To provide a new update of the remaining impediments that should be addressed in order to foster the development of a dynamic NPL market and the debt overhang problem, both from the demand and supply sides of the market;

b. To identify any new potential impediments that might have occured within the context of the recent legal & judicial developments.

Any impediments that have been identified in the following analysis represent, to the best of HFSF's knowledge, the current framework and specifically what has been legislated up to 30/11/2017, without taken into consideration any initiatives that are currently under way. Since HFSF has not participated in all relevant discussions and the legislative process regarding the agreed judicial and legal reforms, it is our understanding that potentially a number of matters raised herein may already have been addressed and or in the process to be addressed by the Greek Authorities at the time of the analysis' publication.

In order to deliver this updated study, HFSF has:

- leveraged on both the initial study of HFSF (October 2015) as well as the updated one of June 2016;
- collaborated with the four systemic Banks through the Hellenic Bank Association (HBA)
- employed as an advisor, Potamitis Vekris Law Firm.

This report is organized as follows: **Section 2** summarizes the major non-regulatory impediments as at 30/11/2017 and **Section 3** provides a detailed description of the non-regulatory obstacles to the development of the specific market and proposals, where applicable, to deal with specific issues.

## 2. Executive Summary

The following analysis, aims to update the status of the constraints for the development of a dynamic NPL market and identify any new obstacles that should be addressed in order to relieve the Banks' debt collection burden and collateral foreclosure, by boosting NPLs recovery values and leveraging external financing and expertise. Facilitating debt restructuring and equity conversion could also inject significant capital into the corporate and SME sector and promote economic growth. Ultimately, such a market could generate a virtuous circle, where progress in cleaning banks' balance sheets and restructuring distressed borrowers strengthens confidence, improves bank profitability, and frees up resources to support new lending, fostering economic recovery.

It noted that the four Systemic Banks (Alpha Bank S.A., Eurobank Ergasias S.A., National Bank of Greece S.A., Piraeus Bank S.A.) (hereinafter "Banks") have already recognized that a closer cooperation in terms of corporate loan restructurings of common borrowers, is criticall both for the economy and for the accomplishment of their respective Non Performing Exposures (NPEs) Targets and Business Plans approved by their Board of Directors (BoD) and submitted to the Single Supervisory Mechanism (SSM).

For this reason, the Banks have established in January 2017, under the auspices of the Hellenic Bank Association (HBA):

- the NPL Forum as an initiative to utilize an interactive model regarding the management of the common Large Corporate non performing borrowers. The NPL Forum's set up is also in line with the recommendations of the Hellenic Financial Stability Fund (HFSF) resulting from its respective study of April 2016[1].
- the NPL Coordination Committee for reviewing, monitoring and proposing on the legal and regulatory framework of both wholesale and retail NPLs (eg out-of-court workout mechanism, Household Insolvency, NPL sales & servicers, asset and debt management companies, Code of Conduct).

The Banks have also initiated a collaborative partnership for the management of a selected pool of NPL of common SME borrowers under a common asset management & servicing platform. The key objective is to enhance efficiency of work-outs, accelerate recoveries and reduce NPL stock.

The NPL issue is a multi-faceted, multi-disciplinary problem, involving among others a number of legal, judicial, cultural and other non-regulatory impediments (tax, administrative etc.) that need to be addressed. Deficiencies in the legal and judicial framework are the most significant obstacles.

**A.** Even though the Greek authorities have already legislated or initiated a number of **legal and judicial** reforms since 2015, the Greek institutional framework still faces some structural difficulties. The most important ones could be summarized as follows:

[1] HFSF Large Corporate NPL Resolution Study, April 2016

1. The weaknesses in the legal and judicial framework have led to long backlogs and delays. 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. The amendments of L.4346/2015 appear to have set the basis for an improved efficiency in the enforcement process; however there are not tangible results yet.

2. Although the Ministry of Justice (MoJ) has acknowledged the need for further training of judges and relative seminars on household insolvency matters have materialized, there is still a lack of specialized and experienced judges to deal with NPLs, leading to long backlogs and delays.

3. Moreover, the inflexible insolvency regime, the inadequate institutional legal framework, as well as the inefficient auction structure, result in substantial delays in enforcement and/or merely no enforcement action. More specifically:

**A1. Law 3869/2010 (Household Insolvency Law):** The amendments introduced by L.4346/2015 appear to have set the basis for much improved efficiency in the enforcement process. The following though, remain impediments that need to be revisited, so that law may provide a safety net to vulnerable debtors who are in need of a debt relief, whilst reducing opportunities to strategic defaulters to delay and/or avoid the fulfillment of their obligations:

1. According L. 3869 (art. 10 par. 1) the debtor upon submitting a petition to obtain Law protection is obliged to declare his current financial situation and income ('duty of honesty'). It is proposed the Law to provide that all bank and tax secrecy restrictions are automatically lifted for any debtor submitting a petition to obtain Law protection.
2. During the past year, a significant effort to shorten waiting periods for the court hearings of applications has been underway. This is partly due to the increase of the number of available judges for the hearing of such cases, as well as an improvement in the administration of the cases' workload. However, we are not aware of any statistical information reflecting the improved performance such as the reduction of the number of pending cases or the effective reduction of the overall time required for the application to be heard and decided on and the reduction of the stand still period imposed upon the creditors following the submission of the application
3. It is recommended the debtor should be disqualified from the protection provided under L. 3869, in case of default.
4. The Law provides for automatic suspension of all enforcement actions, by the mere filling of an application; such a suspension remains in effect until the hearing of a provisional order application, which may take place even a year after the original filing (which is usually the case).

**A2. Law 4469/2017:** The **Out of Court Work-out (OCW) Law** was introduced on May 2017 and establishes a framework for negotiations among distressed enterprises and professionals, public creditors, banks and other creditors in order to reach a restructuring out of court agreement. The new framework involves the setting up of an IT platform to

facilitate exchange of information and communications among the parties, as well as co-ordination by a certified mediator. The OCW IT platform became operational on 3/8/2017 and c. 300 applications have been submitted up to 30/11/2017.

There are some features of the new framework that might have an adverse impact on the enforcement of creditors' rights. The major ones are the following:

1. there is an undue reliance on information submitted by the debtors' as it appears that this is inconsistent with information available from the banks, the tax authorities and the pension funds. There is also the risk that this information may be used to proceed with agreements based on inaccurate information.
2. there are opportunities for the abusive exercise of available stays on execution.
3. there are complex issues (different types of valuation as well as verification of claims) that are likely to be raised at the ratification court hearing. This may cause significant delays to the ratification process.
4. The OCW process may prove to be a predominantly in-court proceeding and may appear to be a duplication of the business recovery proceeding of the Greek Bankruptcy Code.

**A3. Code of Civil Procedure (CCP):** The amendment of the **Code of Civil Procedure** appears to have set the basis for much improved efficiency in the enforcement of security rights. However, the Law needs homogenization and rationalization of the relevant fees and costs related to the enforcement procedures.

**A4. Greek Bankruptcy Code (G.B.C)** The GBC provides both for restructuring proceedings and for liquidation (either of the business as a going concern or of the assets of the debtor on an individual basis). There have been recently steps on improving the pre-bankruptcy proceedings, but it seems that there are still inefficiencies. The situation may improve as qualified licensed insolvency professionals become engaged in the restructuring effort. Nevertheless, there is still a need to improve the competence and efficiency of courts and significant room for improvements of the pre-insolvency proceedings.
Moreover, the duration of the liquidation procedure described in the GBC may last up to ten years resulting in a number of inefficiencies such as the devaluation of the bankrupt estate, the encumbrance of the judicial systems with long lasting cases and the accrual of losses to creditors. However, a recent amendment has provided a 3 year discharge period provided that the court finds that the insolvent person is excusable (is held to have acted in good faith and not to have intentionally caused the insolvency). There is no factual basis on which to evaluate how quickly the new provision will be implemented.

**A5. Other Legal:** Other major legal obstacles refer to:

1. Harmonization of laws. There are various laws and regulations for the protection of the debtors, such as Law 3869/2010, Law 3758/2007, Law 2251/1994, Law 4307/2014 and BoG's Code of Conduct, which are neither harmonized, nor aligned creating various implementation issues.
2. Liability of Interim Management. Interim management appointed by the creditors (incl. executive members of the Board of Directors) could have liability (civil and criminal) for

the failure to pay taxes, salaries and social security contributions pending during their tenure (regardless of whether the payment become due during or prior their tenure); this curtails the ability of banks, and creditors more generally, to appoint Board members and Chief Restructuring Officers to monitor compliance with restructuring plans.

3. Liability of bank's restructuring personnel. Article 65 of recently enacted Law 4472/2017 sets 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, special liquidations or the sale or servicing of loan receivables. In particular, criminal charges may only be brought by a three member judicial committee following a recommendation by the Bank of Greece. As noted above, amendments may be required to the statute to ensure that directors and officers are also provided with the explicit protection in the event of loan portfolio sales or new disbursements to restructured companies.

**B. NPL transfer and servicing is now regulated on the basis of new enactments (L.4354/2015, L.4389/2016 and L.4484/2017).** The following obstacles must be considered:

**B1. Transfer of Loans**

1. The NPL Law, as amended and currently in effect, provides a framework for the transfer of loan portfolios, including NPLs. The use of the Securitization Law seems to be excluded where the transfer involves NPLs. The procedural and tax treatment of the two laws is not fully aligned; however, there does not appear to be any policy basis for such differentiation.
2. While the NPL Law clarifies that the transfer is subject to VAT, it does not specify that it exempt from VAT under the relevant rules and does not specify that it is not also subject to stamp duty (which is assessed on assignment of claims).
3. It is unclear what liabilities the transferee (via the servicer) assumes regarding the law 128/1975 levy on the acquired portfolio.
4. A pre-requisite for the transfer of an NPL is that the transferor must provide the debtor with an offer to settle within the 12 month period prior to the transfer.

**B2. Servicing of loans**

1. The definition of servicers as suppliers for the purposes of application of consumer protection laws seems awkward and likely to create uncertainty as to their obligations and constraints (e.g. in certain cases of disputes between services and debtors there may be a reversal of the burden of proof in favor of the debtors).
2. The NPL Law should have specific reference to the obligations of servicers (similar to those that call-centers have) when contacting debtors.
3. The NPL Law does not include an express statement that transferees (and those acting on their behalf) have the same rights to collect and enforce as the transferring institutions.

**C.** From a **Tax and Accounting** perspective, the most important constraints could be summarized to the following:

1. Tax regime should not discriminate against NPL resolution. Tax benefits from loan loss-provisions and write-downs of loans should be crystalized so as to accommodate NPL sales.
2. Full or partial debt forgiveness agreements to legal and natural persons should be explicitly exempted from stamp duty. Similarly these agreements should not be considered as a donation and should be exempted from the income tax at least until 31/12/2018 instead of 31/12/2017.
3. Lift any incentives to proceed to force sale of property, i.e. in case of a voluntary transfer of real estate property, the seller must deliver to the notary a certificate regarding any overdue tax indebtedness.

**D.** Finally**,** some **administrative & other obstacles have been identified,** as follows:

1. There is a lack of an active platform for the purchase/sale and valuation of NPLs. A single hub could be created to facilitate NPL Securitization/Trading of Small/Mid Market loans which will:
   - Provides easy access to SME loans for private investors.
   - Create transparency and liquidity for this high yield segment using high quality data.
   - Addresses financing needs.
   - Creates a new business model for smaller banks by freeing up their balance sheet.
   - Create world class database of private firm financials and loan pricing.

2. Real estate is extensively used as collateral for lending purposes. However, the ineffective property registration contributes in delay of the sales process in foreclosures. Also, the lack of transparency in the market renders it very difficult to objectively value the real estate.

3. As of 26/5/2017, the Ministry of Justice, Transparency and Human rights, published via the Government Gazette and by Ministerial Decision (MD) the commencement of electronic auctions, in accordance with the provisions of the Code of Civil Procedure (CCP). However, the e-auction platform has only been ready in September 2017 and therefore e-auctions are supposed to commence at the end of November 2017. The study puts forward specific recommendations for the improvement of the e-auction process.

# *A. Legal & Judicial*

## A1. Judicial

| | Description of Issue | Proposed Resolution Action |
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| **1.** | Although the Ministry of Justice (MoJ) has acknowledged the need for further training of judges and relative seminars on household insolvency matters have taken place; there is still a lack of specialized and experienced judges in dealing with NPLs, leading to long backlogs and delays. | Enhancing the training process of judges with the purpose of improving their knowledge and familiarity with insolvency matters.<br>It would be very helpful in terms of monitoring, to track the number of judges attending seminars on the various over-indebtedness proceedings, the subject matter and duration of those seminars and their frequency. |
| **2.** | 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. 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 remain a challenge.<br><br>Also the recent enactment of the OCW law (4467/2017) is likely to lead to an increase in the volume of cases brought before the Multimember Court of First Instance as well as impose on that court the adjudication of technically challenging issues. | During the past year, a significant effort to shorten waiting periods for the hearing of law 3869/2010 application has been underway. It appears to reflect the increase of the number of available judges for the hearing of such cases, as well as an improvement in the administration of the case load. However, we are not aware of any statistical information that reflect the reduction of the number of pending cases or the effective reduction of the overall time required for the application to be heard and decided on and the reduction of the stand still period imposed upon the creditors following the submission of the application. There is, therefore, no evidence on which to assess whether the effort to date is sufficient to address the significant problems caused by law 3869/2010 on the effective enforcement of creditors' rights.<br><br>It would be helpful to monitor the development of pending cases and produce statistical data for further study and assessment (Annex 1). Based on the available information it is not possible to conclude whether the problem of insufficient capacity to deal with the large volume of cases has been resolved. |

## A2. Legal

### Weakness in the Legal Framework

1. **Law 3869/2010 (further modified by law No. 3996/2011, Law No. 4019/2011, Law No. 4161/2013 and Law No 4346/2015, )**, which provides for relief to over-indebted individuals has produced material unintended consequences in respect to the ability of creditors, including secured creditors, to enforce their rights.

| | **Description of Issue** | **Proposed Resolution Action** |
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| **1.1.** | ▪ The law provides for an automatic suspension of all enforcements actions by the mere filing of an application. Such automatic suspension remains in effect until the hearing of a provisional order application that frequently takes place nearly one year after the original filing, even after the recent law modification.<br><br>▪ It is not clear that a court hearing is the appropriate procedure to address the volume of potential applications. Both the number of pending applications and the duration of pending cases suggest that the issue of capacity remains problematic.<br>It may also appear that the judge is provided with very broad discretion to affect creditor rights; in particular, the judge is authorized to write-off debt, to exempt certain assets from a forced sale for the satisfaction of the creditors and to also set both the value and the terms of payment to the creditors in respect of such exempted property.<br><br>▪ Stand still orders are issued liberally. In addition, courts provide generous provisional terms for the service of debt liabilities at a fraction of the agreed terms.<br><br>▪ The hearing on the substance is set at a long interval from the hearing of the provisional order, even as late as 15 years later. Courts also tend to be liberal in adjourning hearings to a later date. The upshot of this is an effective rescheduling of the debt | It is evident that the creation of a market in NPLs (as well as the preservation of a payment culture and the tackling of strategic defaulters) depends on addressing the effects of Law 3869/2010.<br><br>That would seem to require two different initiatives, (a) to address the backlog of cases, and (b) to amend the Law so as to avoid cases of abuse arising in the future.<br><br>▪ Addressing the backlog of cases via an amendment of the current law presents difficult procedural and constitutional challenges. Provisions recently adopted may improve the situation. Such provisions require, in particular, resubmission of up-to-date information in support of pending application, the rescheduling of hearings set more than 3 years after the recent amendment.<br><br>▪ However, what is needed in the medium-term, is to increase the capacity of courts (indeed as per provisions of L. 4336/2015, number of Peace Court judges will increase) and to provide judges with detailed guidance as to how to handle such cases, both procedurally and on the factual aspects. Some guidance is already provided in the recent amendment (e.g. on living expenses) and further assistance to judges on how to balance the interests of debtors and creditors in reducing the debt burden or in rescheduling obligations would be very helpful. |

| | Description of Issue | Proposed Resolution Action |
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| | without any review of the substance or the evidence.<br><br>▪ The law provides that secured creditors' rights on the primary residence up to a certain value can be overridden by the judge at the time of the hearing on the substance and otherwise the debt liability can be reduced (no floor is provided for such reductions). Decisions occasionally exempt from liquidation assets of the debtor that are not protected under the statute (such as secondary homes, or primary residences that are of a value greater than that protected under the statute).<br><br>▪ According to Art. 10 par. 1 of L. 3869 the debtor upon submitting a petition to enter L. 3869 is obliged to declare his current financial situation and income ('duty of honesty'). Additionally, by virtue of par. 2 of same Article the debtor is further obliged to allow creditors to have full access to the data reflecting his financial situation.<br><br>It is quite evident that debtor's compliance with the abovementioned obligations is solely a result of his own will to be in conformation with the relevant prerequisites, which cannot be adequately controlled. A major impediment towards that direction constitutes the severe legislative framework in force regarding the secrecy of bank deposits and the tax secrecy as well. The relevant obstacles must be overruled for the purpose of L. 3869, consisting on the protection of over in debted individuals who in fact failure to settle their financial obligations, to be implemented efficiently. | ▪ Given the recent development of an information platform for the purposes of the OCW implementation, it would be recommended to include also law 3869/2010 giving the permission by the applicant to its creditors to exchange among themselves credit information that they possess.<br><br>▪ It should be underlined that a provision enabling the lifting of the banking secrecy of Art. 1 of Legislative Decree 1059/1971 and the tax secrecy of Art. 17 of Law 4174/2013 has already been inserted to L. 4469/2017 (OCW). Thus, it is proposed to introduce a similar provision to L. 3869 stipulating that upon filing the petition under L. 3869, the debtor provides his permission to all of his creditors to process and cross-check information that is referred to in the petition as well as to exchange any additional information that the creditors may process; the license of the previous section will in fact result to the lifting of bank and tax secrecy. |

| | Description of Issue | Proposed Resolution Action |
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| | ▪ According to L. 3869 since the completion of the filing of the debtor's petition and until the hearing for a provisional order, the latter shall pay the amount that corresponds to 10% of the installment he had to pay to all creditors at the day of the filing of the relevant petition (Art. 4 par. 3 L. 3869).<br>A similar requirement for the debtor is also in force with regard to interval between the issuance of the provisional order and the hearing for the settlement agreement (Art. 5 par. 3 L. 3869).<br>However, the provisions of L. 3869, as currently in force, lack of a compulsory mechanism for the debtor's compliance with the relevant obligation. Consequently, it is rather common for a large number of debtors to abuse the respective provisions in order to gain the interim protection from enforcement measures for a period of up to two (2) years. | it is proposed the insertion of a provision stipulating that the payment of the minimum installment specified in Art. 4 par. 3 and Art. 5 par. 3 of L. 3869 (i.e. 10% of the original monthly installment) should be rendered as admissibility requirement of the debtor's petition for the issuance of a provisional order and the rendered as admissibility requirement of the debtor's petition for the issuance of a provisional order and the petition for a final judgment respectively. In particular, the debtor shall bear the burden of proof regarding the payment of the minimum installment and must present relevant evidence at the respective court hearing; otherwise, the Court will be entitled to overrule his petition, since his noncompliance with a duty of major importance towards the creditors. |
| **1.2.** | It is 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 the law. | It is considered that a better balance must be found between the competing interests of creditors and debtors. The requirement that a debtor who has defaulted is entitled to retain various protections until a court declares it in default imposes significant burdens on the creditors that, given the reasonable presumption that the debtor is impecunious, will in most likelihood not be recoverable, at least in full.<br><br>It is acknowledged that in some cases the debtor's default is due to circumstances that should not preclude the preservation of some degree of protection from individual measures; in such cases, most likely a minority among cases of default, the debtor should be entitled to seek the preservation of such protections by application to court. This appears both more economical and fairer (as there is no reason to presume that cases of default are attributable to causes such as force majeure, but it may be admitted that a minority of cases may fall within that category). |

| | Description of Issue | Proposed Resolution Action |
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| **1.3.** | The law also provides that an applicant whose application was rejected 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 circle of repeated applications leaving little to no room to creditors to enforce their rights.<br><br>In addition, a common procedural abuse is the waiving of an application and the submission of a new one, for the purpose of extending the automatic protection from enforcement. | No action has been taken to address this risk of procedural abuse; it is manifestly in the interests of justice to ensure that rights are not exercised abusively.<br>It has been observed that applicants try to extend their protection under the automatic stay provided by the L3869/2010 by a means of a waiver of their initial application and the filing of a new one.<br>It is therefore recommended that the filing of new application be subject to leave by a court of competent jurisdiction, which would be required to ascertain whether the waiver is an effort to extend the duration of the stay beyond the legally mandated period.<br>Another solution could be the Law amendment which will provide that a petition to enter L. 3869 can be submitted only once and the debtor is not allowed to submit a second petition when the case has been dismissed on the merits. |
| **1.4.** | Debtor's application suspends the accrual of interest 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. | It is considered that interest should continue to be accrued on all loans. However, it may be appropriate to set a low interest rate for such cases, so as to avoid the imposition of excessive burdens on debtors.<br>The suspension of interest accrual for unsecured claims upon the submission of an application under law 3869/2010 is not analogous as a measure to the suspension of interest on unsecured claims upon the declaration of bankruptcy. Article 24 of the Bankruptcy Code provides that interest is suspended upon the declaration of bankruptcy, while paragraph 3 of article 6 of law 3869/2010 provides that interest accrual is suspended upon the service of the debtor's application. In the former case, the suspension is a result of a finding by a competent court that the debtor is insolvent and the appropriation of its property for the satisfaction of its creditors. In the latter case, the suspension is the result of a unilateral act of the debtor, who maintains possession of his/her property and may or may not be found worthy of protection at the time when, after a very long time interval after the application is served, the case is heard by a court of competent jurisdiction.<br>Moreover, the suspension of interest accrual without a finding of the merits may be seen as an additional unwitting inducement for the abuse of the law 3869/2010 application. |

| | Description of Issue | Proposed Resolution Action |
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| **1.5.** | The debtor is not obliged to prove his compliance with the terms of the temporary order at the hearing of his application<br><br>Given the potential for abuse of law 3869/2010, stronger safeguards are needed so as to ensure that meritorious applications can actually be heard within a reasonable time, so that individuals that merit relief can obtain a release from their debt within the 3 year period prescribed by the European Commission as the maximum period for such relief.<br>An unsuitably lax procedure is not only adverse to the reasonable interests of the debtors but also fails to differentiate between those applicants that deserve assistance and those that make use of the procedure in an abusive manner. This is unfair and contrary to the public interest. | It is recommended the debtor should be disqualified from the protection provided under L. 3869, in case of default.<br>It is therefore proposed to amend the law accordingly in order to stipulate explicitly that if the debtor fails to pay the minimum amount as defined by the court decision of the judge's provisional order, then his protection is automatically lifted and:<br>(i) the creditor's claim is restored to its previous status,<br>(ii) the creditor may proceed with enforcement measures<br><br>According to the proposed procedure, the notice of the creditor that the debtor failed to comply with his financial obligations for a time period, not exceeding ninety (90) days.<br><br>The disqualification will be in force towards the creditor against whom the debtor failed to meet his obligations; the respective creditor will be allowed to proceed with enforcement against the debtor in default and may service an extrajudicial notice to him/her providing for a time period of thirty (30) days for the repayment of the outstanding amounts towards all the creditors.<br><br>In case the debtor fails to comply with the abovementioned during the thirty (30) days' notice, his protection will be lifted towards all involved creditors. The debtor's rights in this case are fully protected, with recourse to general procedural measures such as the enforcement objection under article 933 of the Greek Code of Civil Procedure. Thus, the debtor will be fully allowed to challenge any case of wrongful enforcement. |
| **1.6.** | According to the current version of the Law, it is possible for the debtor to submit a liquidation proposal requesting the exemption of its main residence from the property under liquidation. The Law provides that the debtor may also request for state financial support which will supplement the debtor's contribution. The state subsidy is paid for a maximum period of 3 years (Article 9 par. 2 of L. 3869). However, this option has not been utilized by the debtors. As a result, the relevant funds (c €100mil for the Greek banking sector in total) that have been budgeted for this purpose have been underutilized. | it is proposed that L. 3869 to be amended allowing for the better utilization of funds that have been set aside for this purpose. The proposed improvement consists on allowing creditors to request the subsidy of Article 9 par. 2, in cases where the debtor does not exercise this option in a timely manner (for instance, within a period of 15 days upon receiving a relevant extrajudicial notice from his creditors to proceed to the abovementioned request for financial support). |

| | Description of Issue | Proposed Resolution Action |
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| **2. Law 4467/2017: Out of Court Work Out Mechanism (OCW)** | | |
| **2.1.** | The platform that is established for the management of the large volume of expected applications receives inputs from Teiresias (which tracks defaults under bank loans), TAXIS (the tax database) and the social security data base, the process is primarily based on the information provided by the debtor.<br>This is likely to lead to disputes as to debt amounts that are referred to the court hearing, allow for the process to proceed even in unmeritorious cases (e.g. if the debtor understates debt to banks and public creditors and/or overstate debt to friendly third parties). in such cases, judicial stays on creditors' rights may extend for a long period of time. | It is significant for the evaluation of the possible impact of these design features that if a plan is referred to court, all creditors are stayed until a decision is issued. It is unclear how many cases can be heard by the competent multi member courts of first instance in any given year, and how many cases will actually be brought to such courts, but the risk of stays that remain in place for months or even years is apparent. |
| **2.2.** | It is considered that the creation of the IT platform that permits parties to have a view of the overall assets and liabilities of a debtor to banks, the tax authorities and the pension funds is a very important development that should provide significant assistance to rehabilitation efforts.<br>However, the new law does not take full advantage of this new information, as it is used only for the purposes of comparison with the information submitted by the debtor and not as the basis for discussions. | While this new proceeding is intended to address a pressing need, there are design flaws (in particular the accuracy of data, risk of abuse of the stay provisions) and questions as to the adequacy of available resources (courts, mediators).<br><br>It would be significantly more efficient to base discussions on the data available to the platform and limit negotiations only to the institutional creditors sharing such information.<br>Moreover, as the current creditor ranking system provides the basis for an algorithm for the proportionate allocation of any debt reduction or rescheduling, it would seem possible to set the parameters for the participation in any such reduction or rescheduling, which, if complied with in the event of a scheme agreed to among the debtor and the banks could lead to an agreement binding on the public creditors on the basis of their acceptance. Such deemed acceptance is already anticipated in the case of small debts and as a matter of principle it can be applied more broadly.<br>Such a reduced scheme would seem to serve a significant portion of the cases, could facilitate negotiations and avoid the need for court ratification (as all parties would be consenting or be deemed to be consenting).<br>It is also worth noting that cases where the inclusion of other creditors is appropriate, parties may utilize the business recovery proceeding of the Bankruptcy Code, which is no less efficient for such cases than the newly introduced scheme. |

<table>
<tr><th colspan="2">Description of Issue</th><th>Proposed Resolution Action</th></tr>
<tr><td>2.3.</td><td><u>Declaring the debtor in default</u><br><br>▪ According to Article 14 par. 1 of OCW Law, if the debtor slips into default for more than 90 days, the creditor holding the relevant claim may only file a petition for annulment of the entire Debt Restructuring Agreement.<br>In this case, the Agreement is annulled towards all creditors and the debtor’s original obligations are restored to their full force. Pending the procedure for annulment, the creditor may only seek interim judicial protection through provisional measures, e.g. by requesting a freezing injunction for the debtor’s assets. Thus, in order to declare the debtor in default, creditors must resort again to judicial proceedings, even if the agreement has not been submitted for validation<br><br>▪ The OCW Law contains a different provision for debts owed to the State or to Social Security Funds. In particular, the Law provides that in case of non-payment to the State or to other public entities, the Debt Restructuring Agreement is automatically cancelled towards the State and the relevant claims become immediately due and payable. Thus, the State does not have to file a petition for the annulment of the Restructuring Agreement, but instead it may proceed with enforcement measures against the defaulting debtor and, more importantly, before all other parties of the Agreement.<br><br>▪ The debtor’s omission to submit several documents such as his income taxation statement can also lead to the same result. Moreover, the State is obliged to notify the Agreement’s annulment to the remaining creditors, who may petition the court for annulment of Agreement towards all of them. Consequently, the automatic cancellation of the Agreement towards the State is also a cancellation request for rest of the creditors.</td><td>▪ It is considered that the adoption of a similar provision between the State and the remaining creditors, since they all participate under the same prerequisites into the Debt Restructuring Agreement.<br>As a result, not only all creditors will be equally treated and the resort to judicial proceedings, which are time-consuming and burdensome, will be avoided, but also the rights of the remaining creditors, to whom the debtor is still reliable, will not be undermined.<br>It should also be highlighted that the proposed amendment does not violate the privileges of the State, which keeps on proceeding with enforcement measures against debtors, without resorting to courts for the issuance of relevant judgments.<br><br>▪ It is highlighted that similar remedies are provided for creditors under the Recovery Procedure of the Bankruptcy Code (see article 106e par. 4), if the debtor defaults in performing an undertaken obligation according to the Recovery Plan. In such case, the creditor is entitled to terminate the Agreement in accordance with the general provisions of contract law and in accordance with the relevant contractual terms. Thus, under the Recovery Procedure of the Bankruptcy Code (which bears many similarities with the OCW), the Law does not provide for a mandatory judicial procedure, as the only way to protect the creditors’ rights in case of debtor’s default.</td></tr>
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| | Description of Issue | Proposed Resolution Action |
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| **2.4.** | Absence of an explicit procedure for ascertaining creditors' claims under the OCW<br><br>No procedure is provided for the ascertainment of claims declared by the debtor in its application. Specifically, although the provision of article 8 par. 1 stipulates that creditors following their declaration to participate on OCW shall verify their claim, no consequences arise in case of a mismatch between the two amounts (i.e. the declared one by the debtor and the confirmed by the relevant creditor).<br><br>It becomes apparent that the Law does not provide a concrete solution when there are significant divergences between the amounts declared by the debtor and the participating creditors. This issue is not addressed effectively with the provision of Article 8 par 2, which states that if the coordinator finds that the amount of the claim declared by the debtor is different than the amount of the established debt and that this difference cannot be justified by objective reasons, he shall request supporting proof of claim by the debtor and creditor within a deadline of five (5) days. If the exact amount of the claim is not proven by the submitted documents, the coordinator will factor in only the undisputed part of the claim (see article 8 par. 2 of the Law). | The OCW law should provide for safeguards deterring the abuse of process, as it is very likely that quorum and majority are calculated on the basis of amounts that do not reflect the reality. This will be required to be found from the court in the verification process although it is not a part of the procedure followed, the voluntary jurisdiction.<br>Thus, a provision should be inserted stipulating that in case of a mismatch between the above amounts the coordinator shall request additional proof of claim. Following the requested proof of claim, if the mismatch still exceeds the percentage of 10%, the coordinator must terminate the procedure and draft a failure report. |
| **2.5.** | The ratification hearing is likely to address several factual questions, in addition to review of procedural compliance, such as verification of claims, verification of claims excluded from cram down under the *de minimis* rule in the above law, confirmation that the no creditor worse off test is met, that the minimum requirements applicable to public debtors are met, that the restructuring of liabilities complies with the rules in the statute.<br>In addition the court is presented with the valuation of collateral on a forced sale basis as well as the determination of the going concern value of the debtor (post workout) on the basis of which (in combination with the valuation of collateral as mentioned previously) it will adjust the value of creditors' claims. The scope of potential disputed matters is therefore broad and in some cases hearings may be expected to require significant resources and expertise. | It is considered appropriate to measure the implementation of the new law in terms of the time required for application to conclude its course, the percentage of applications that lead to agreed plans that are submitted for court ratification, the percentage of agreed plans that are implemented without court ratification (no cram down on dissenting parties), the length of the ratification proceedings, the percentage of ratified agreements, and the average duration of stays (both before an agreement has been reached and after). |

| | Description of Issue | Proposed Resolution Action |
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| **3. Code of Civil Procedure (CCP)** | | |
| **3.1.** | The amended law still permits the filing 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. | It seems advisable to restrict (article 933) application to matters relating to the foreclosure and not the executory title;<br>it would also seem highly advisable to exclude arguments based on abusive exercise of the creditor's rights as forming part of the challenge to the title and not the process of foreclosure, except perhaps on the basis of lack of proportionality (an asset of very material value being put into a forced sale for a de minimis claim) and only if the statute (or subordinate legislation) were to provide specific guidelines for the application of that rule (e.g. the value of the claim being less than 5% of the "objective" value of the asset, or, where such values are not available, the fair market value as assessed by an independent expert). |
| **3.2.** | Given the distressed state of the local markets and the large volume of NPLs, it may be questioned whether in the immediate future asset auctions are likely to provide secured creditors with tangible results. | The CCP now includes the possibility of credit bidding; given the limited available liquidity, this may facilitate creditor participation in auctions; ways to further facilitate credit bidding by banks should be considered (especially as to the satisfaction of higher ranking general preferences – e.g. payment by the bank by means other than cash) and appropriate provisions should be adopted.<br>It may also be appropriate to consider alternative ways for realization of security. A recent enactment (4472/2017) amended the Code of Civil Procedure (article 959A) to elaborate the procedure of electronic auctions. The effectiveness of the new procedure has not yet been tested in practice. |
| **3.3.** | The Law needs homogenization and rationalization of the relevant fees and costs regarding the to the enforcement procedures. | Transparent and simple determination of the fees given to individuals engaged in the enforcement procedure (notaries, bailiffs, land registrar), such as: discontinuation of charges which are of a subjective nature (e.g. according to the number of sheets or copies), homogenization across the country and reduction of registration costs in the land registries (e.g. foreclosures, mortgages);<br>It noted that law 4446/2016 includes provisions regarding court fees that may address some of the concerns identified above. |

| | Description of Issue | Proposed Resolution Action |
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| **4. Transfer of Loan Portfolios (L.4354/2015 and L.4389/2016)** | | |
| **4.1.** | The NPL Law, as amended and currently in effect, provides a framework for the transfer of loan portfolios, including NPLs. The use of the Securitization Law seems to be excluded where the transfer involves NPLs.<br><br>Moreover, while Section D of paragraph 1 of law 4354/2015 merely states that "the provisions of this law do not affect the implementation of the provisions of Securitization laws (L. 3156/2003)," it is unclear whether a transferor is free to choose between the two different systems. The introductory report suggests (presumably due to a prohibition of transfers of NPLs in law 3758/2009, regarding collection agencies) that the securitization is only available for the transfer of performing loans. Accordingly, the securitization route is not available for the transfer of NPLs, and in such cases the transacting parties will not be able to take advantage of the facilities it offers. | The procedural and tax treatment of the two laws is not fully aligned; however, there does not appear to be any policy basis for such differentiation.<br><br>Accordingly, where more favorable, Securitization Law's provisions should be substituted for the respective provisions of the NPL Law; alternatively, the prohibition of NPL assignment in law 3758/2009 (regarding collection agencies) should be abolished (at least it should not apply to transfers under the Securitization Law). |
| **4.2.** | The transfer of a loan requires notice to the individual debtor which is both costly and time consuming. | The NPL Law provides that notice may be provided by any suitable means; this is less efficient than the comparable provision of the Securitization Law which deems the registration of the transfer as notice. It is recommended that the same be adopted for the purposes of the NPL Law. However, if additional notice means are needed, they should be specified in the law so as to ensure legal certainty and ability to estimate additional costs. |
| **4.3.** | While the NPL Law (L. 4354/2015 article 3) clarifies that the transfer is subject to VAT, it does not specify that it exempt from VAT under the relevant rules and does not specify that it is not also subject to stamp duty (which is assessed on assignment of claims). | It is considered that the authorities should intend for the two regimes to be aligned, and amend the law to say so expressly. Otherwise, uncertainty as to the tax treatment would continue with a significant effect on likely transactions.<br>If a change of the law is deemed inappropriate, then the Tax Authorities could clarify their position on the tax treatment of the transfers of receivables under 4354/2015 by means of a circular or similar public statement. |

| | Description of Issue | Proposed Resolution Action |
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| **4.4.** | A transfer of NPLs:<br>▪ may expose the transferor's management or competent committee to liability for breach of fiduciary duty if consideration is deemed inadequate,<br>▪ the transfer of the benefit of certain securities may not be automatic, e.g. further assignment of state subsidies that may depend on consent by the competent state authority.<br><br>Specifically :<br><br>Article 65 of recently enacted Law 4472/2017 sets 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, or on a bilateral basis in accordance with the policies adopted by the respective credit institution.<br><br>As concerns sales of portfolios, however, the new provision may seem to provide inadequate protection. In particular, the test for determination of whether a transfer is priced appropriately is whether the creditor secures higher recovery than it would obtain if the debtor were subjected to enforcement by the creditor (a variation of the no creditor worse off test). However, in the case where a portfolio consists of claims against a number of debtors, (and especially if it includes both performing and non-performing claims), it is impossible to ensure that recovery under each and every claim will be higher than under specific performance, as what drives the decision is the aggregate recovery (being higher than the aggregate recovery in case of enforcement) and not each individual recovery. Therefore, the law needs to be amended to cover the test of minimum recovery for portfolios of claims. | It is considered that the law needs to be amended to cover the test of minimum recovery for portfolios of claims.<br><br>Regarding the preservation of all benefits of the transferor that are related to the transferred claim, we would recommend that the law expressly provide that all related security, guarantee and other similar agreements for the benefit of the lender Including the assignment of state subsidies as security) continue to operate for the benefit of the transferee, subject only to any registration requirements as may apply for such security or other arrangements, without the consent of any party being required. |

| | Description of Issue | Proposed Resolution Action |
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| **4.5.** | It is unclear whether the transferee shall be liable for law 128/1975 levy on the NPL balance held by it.<br><br>This problem is significant for the following reasons:Law 128/1975 imposes an annual levy on banks equal (currently) to 0.6% of the value of their loan portfolio. By a joint ministerial decision (27550/B.1135/1.9.1997) it was determined that the value of NPLs would not be considered for the calculation of that annual levy. However, the same decision specifies that if those claims subsequently are restored to performance (presumably if payment thereunder resumes), then the levy becomes due retroactively since the recommencement of performance. There are at least two critical issues: what constitutes renewed performance and what is the period for which the levy is due retroactively, and, what is the value on which the levy is calculated.<br><br>A portfolio may be transferred for a small fraction of its nominal value but the amount owning, until such time as claims may be written off would be the value of the original claims or the nominal value of those claims. In such case, the levy imposed under law 128/1975 risks imposing a very substantial tax burden on the buyer (via the servicer) on an annual basis. | It is considered that a joint ministerial decision be supplemented to clarify the treatment of transferred NPLs in terms of the levy due under law 128/1975. |

| | Description of Issue | Proposed Resolution Action |
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| **4.6.** | A pre-requisite for the transfer of an NPL is that the transferor must provide the debtor with an offer to settle within the 12 month period prior to the transfer.<br>This is a cumbersome requirement especially in connection with the transfer of portfolios consisting of many small claims.<br>For example, the statute requires an extrajudicial delivery of the offer, which may suggest costly service of process. In addition, the offer must comply with the requirements of the Code of Conduct, which may be interpreted as requiring the collection of information on the debtor's current financial status and the elaboration of different offers per debtor, such that are suitable for its current circumstances. It is easy to see how that can add significantly to the cost and complexity of satisfying that transfer requirement. It is also unclear to what extent an offer extended by the transferor may bind the transferee (or hinder its subsequent ability to collect in excess of the offer made by the transferee). | It is considered that the requirement for a 12-month prior to the debtor must be deleted or alternatively, the Law should provide that the invitation to the borrower should have been given at any time before the offer for sale. |
| **5. Servicing of Transferred Loans Portfolios (L.4354/2015 and L.4389/2016)** | | |
| **5.1.** | The definition of servicers (article 1, par.22 of L. 4354/2015) as suppliers for the purposes of application of consumer protection laws seems awkward and likely to create uncertainty as to their obligations and constraints (e.g. in certain cases of disputes between services and debtors there may be a reversal of the burden of proof in favor of the debtors). | It is considered that the law be amended either to expressly exempt services from the application of consumer protection laws or to provide specifically which obligations for the protection of debtors (other than as provided in the Code of Conduct) are imposed on servicers. |
| **5.2.** | Servicers are required to take special care of socially sensitive groups (article 1 of L. 4354/2015); this creates significant uncertainty as to who is protected and what protections are required and the possibility of abusive reliance on the part of debtors in order to avoid performance of their obligations. | The statute needs to identity the protected groups and the special treatment to which they are entitled; |

| | Description of Issue | Proposed Resolution Action |
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| **5.3.** | The NPL Law (art. 2 par.5) specifically subjects NPL servicers to provisions 4, 5, 6a and 6b, 8 and 10 of law 3758/2009, regarding collection agencies. That cross referencing may be seen as creating legal uncertainty or as inappropriate, given the very different scope of servicers and notification call-centers (and as to whether all of the provisions of that law or just the enumerated ones are to apply, in the absence of inconsistencies with the NPL Law provisions). In particular, article 4 of law 3758/2009, imposes restrictions on communications between the call-center and the debtor but also prohibits any actions in enforcement of the serviced claims and limits the scope of communications to the provision of information on the debtor's obligations under the serviced claims. | It is considered that should replace the general cross-referencing with specific reference to the obligations (similar to those that call-centers have) when contacting debtors. |
| **5.4.** | The NPL Law does not include an express statement that transferees (and those acting on their behalf) have the same rights to collect and enforce as the transferring institutions. | Introduce a provision similar to paragraph 13 of article 10 of the Securitisation Law into the NPL Law. |

| | Description of Issue | Proposed Resolution Action |
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| **6. General Bankruptcy Code (CBC)**<br>The Bankruptcy Code provides both for restructuring proceedings and for liquidation (either of the business as a going concern or of the assets of the debtor on an individual basis). There have been recently positive steps in rendering the pre-bankruptcy proceedings more efficient. The situation may further improve as licensed qualified insolvency professionals start to engage in the restructuring process. Nevertheless, there is still a need to improve the competence and efficiency of courts and further improve of the pre-insolvency proceedings**.** | | |
| **6.1.** | According to the original GBC rule (article 168) debt discharge was possible only after ten years from the declaration of bankruptcy.<br>However, a recent amendment has provided a 3 year discharge period provided that the court finds that the insolvent legal is excusable (is held to have acted in good faith and not to have intentionally caused the insolvency). There is no factual basis on which to evaluate how quickly the new provision will allow debt discharge. | The recent amendment of the CGB has provided some streamlining of the liquidation process; however, these changes do not address the major structural defect of the proceeding, in particular, the delay in proceeding with the auctioning off of the bankrupt's assets due to the requirement that the process of claim verification (including the adjudication of all objections and motions to vacate) must be completed prior to the commencement of the actions. As a general comment the bankruptcy process requires the same intense review and reconsideration as has been applied (with some significant success) to the efficiency improvements of the pre-insolvency proceedings. |
| **6.2.** | Although the Bankruptcy Code regulates commercial insolvency and Law 3869/2010 consumer insolvency, there are common underlying principles and objectives (both for restructuring and for liquidation procedures) that need alignment. Uniform application of such principles and objectives, subject to necessary variations, is desirable, such as a well-established and coherent legal environment to be created for insolvent persons, irrespective of their legal capacities. | Consumer insolvency needs to be incorporated into the GBC as a special proceeding but following the same basic rules regarding the consequences of cessation of payments. International legal practice favors compilation of corporate and consumer insolvency. |
| **6.3.** | There are many individuals involved in the different processes provided in GBC. Syndics, experts and mediators play a crucial role in the procedures, either the rehabilitation ones or the liquidation. The tasks of these individuals should be assumed by professional insolvency practitioners, who should have the expertise and training to deal with insolvency matters, especially with debt restructuring and rehabilitation. | The profession of the insolvency practitioner has already been established in Law 4336/2015 and has been in force since 1/10/2016[2]. The first insolvency professionals have been certified. There are currently 65 certified professionals whose qualifying examination was held in July.<br><br>However, the number seems still insufficient to address the large volume of work needed. Moreover, it is important to review the process of appointment to ensure that creditors' view and prior credentials are taken into proper consideration for the appointment of an insolvency practitioner in all proceedings, including without limitation the bankruptcy proceeding. |

[2] Art. 13 of Law No 4378/2016

| | Description of Issue | Proposed Resolution Action |
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| **6.4.** | When a debtor applies under the Bankruptcy Code, or Law 3869/2010, the debtor declares inability to pay. Under these circumstances the debtor should reveal all its assets to its creditors. However, the creditors cannot verify that the assets revealed actually are the total assets that the bankrupt debtor possesses. | The inability to verify the bankrupt debtor's assets is a legal obstacle which encourages strategic defaulters. As a provisional measure, an amendment could be adopted according to which the applicant either under Bankruptcy Code or Law 3869/2010, has to give his/her consent so that the respective creditors have access to all debtor's data maintained by all authorities, such as tax authorities, real estate registries, credit institutions (including access to the deposits' accounts data), in order to verify the debtor's net worth.<br>An alternative solution could be the establishment of a Credit Bureau as an Independent Public Authority, as already anticipated in the updated MoU, to address the information gap between creditors and debtors in Greece. To bridge this gap, a credit scoring mechanism could be founded, allocating a credit evaluation by way of a score, to each debtor, while not revealing debtor's underlying information.<br>We note that Articles 5 para.4, 61 and 62 para. 2 of Bankruptcy Code seek to address the need for property disclosure. However, no similar provisions applies to the law 3869/2010 proceeding, a discrepancy that does not seem to reflect different policy goals. |

| | Description of Issue | Proposed Resolution Action |
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| **7. Other Legal** | | |
| **7.1.** | **Harmonisation of laws**. There are various laws and regulations for the protection of the debtors, such as Law 3869/2010, Law 3758/2007, Law 2251/1994, Law 4307/2014 and BoG's Code of Conduct, which are neither harmonised, nor aligned creating various implementation issues. | All laws and regulations regarding debtors' protection should be aligned and harmonized, in order to achieve regulatory/legal consistency This unification/harmonisation will potentially enhance regulatory /legal consistency, reduce compliance cost and limit opportunities to strategic defaulters to exploit the system. |
| **7.2** | **Liability of banks' restructuring personnel**<br>Article 65 of recently enacted Law 4472/2017 sets 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, special liquidations or the sale or servicing of loan receivables. In particular, criminal charges may only be brought by a three member judicial committee following a recommendation by the Bank of Greece.<br>The specific Law is not explicitly covering NPL Sales | It is considered that amendments may be required to the statute to ensure that directors and officers are also provided with the intended protection in the event of sales of portfolios (as the test incorporated In the statute for the purpose of protection from liability appears to be based on the comparison of the price at which as asset was sold with the recovery that would have been made by the institution in the event of realization of its collateral through a forced sale – such a test may not provide sufficient or certain protection in the case that the sale concerns a portfolio of claims). |
| **7.3.** | **Liability of Interim Management**<br>Interim management appointed by the creditors (incl. executive members of the Board of Directors) could have liability (civil and criminal) for the failure to pay taxes, salaries and social security contributions pending during their tenure (regardless of whether the payment become due during or prior their tenure); this curtails the ability of banks, and creditors more generally, to appoint Board members and chief Restructuring officers to monitor compliance with restructuring plans. | There is a need to shelter interim management (that has been appointed pursuant to a restructuring plan that is filed for ratification) from liability for any prior debts of the company (incl. tax, salaries, social security arrears). No such provision protecting interim management exists under Greek law; as a result the position of any members of an interim board or management body is extremely precarious. |

## *B. Tax & Accounting*

| No | Description of Issue | Proposed Resolution Action |
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| **1.** | Tax regime should not discriminate against NPL resolution.<br><br>According to the L. 4389/2016 (art. 62) the benefit acquired by a legal or natural person resulting from the write-off of part or all of its debt to a credit or financial institution, a credit or financial institution under liquidation or a company of Law 4354/2015 (Management of Non-performing Loans) in the context of an out-of-court settlement or an execution of court decision, is not considered donation and is exempt from the income tax. This provision applies only to debts that were past due or pending before court or restructured as of 31/3/2016 and for out of court settlements which have taken place from 1/1/2016 until 31/12/2017. | Key features of a non-discriminatory code may include close alignment of income 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.<br>The Greek authorities might also examine the following:<br>- Full or partial debt forgiveness agreements to legal and natural persons should be exempted from stamp duty.<br>- Tax exemption to be considered for debts fully or partially cancelled due to threatened or actual insolvency.<br>- Where property is used as collateral and security enforcement generates a real estate transfer tax, set and/or extend the period available for banks to utilize a reduced tax rate.<br>It is recommended that the deadline of 31/12/2017 to be removed to 31/12/2018. |
| **2.** | Lift any incentives to proceed to force sale of property, i.e. in case of a voluntary transfer of real estate property, the seller must deliver to the notary a certificate regarding any overdue tax indebtedness. On the other hand, in case the property is sold by public auction at force sale value, tax claims benefit from the general privilege, of 25% of the auction proceeds. | It is proposed to be considered that the same limitation of 25% also applies in case of a voluntary sale and that the relevant amount would be paid to the tax authority (since there is overdue Tax) through the notary out of the sale proceeds.<br><br>This would both protect the interests of the tax authority and at the same time would operate as a further incentive for debtors to settle NPLs trough a voluntary sale of the mortgaged property. |

| No | Description of Issue | Proposed Resolution Action |
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| **3.** | Real estate property is heavily taxed in Greece, impeding the purchase of new properties hence, pushing back the opening of the real estate market and hence the ability of banks to run foreclosure/ recovery campaigns on their NPLs secured by real estate. | It is considered that, an accommodative tax framework should be considered for entities holding significant bulk of real estate property. REIT (AEEAP) is a framework that with some amendments (e.g. making non obligatory its introduction to the stock exchange) could effectively address this issue. |
| **4.** | Transactions including payment transfers, debts, cheques and other negotiable instruments, except from debt collection and factoring fall within the scope of VAT but benefit from an exemption (Article 22, Greek VAT code (Law 2859/2000)).<br>Lending (and services to the administration of the loan) is also subject to the VAT but the original loan extension also falls within the exemption.<br>Moreover, the Authorities consider that the exemption provided for the credit administration applies only to such activity performed by the initial creditor. Subsequent acquirers of loans may not claim this exemption. | It is considered that in case a credit institution transfers its loans portfolios, while withholding their administration, the fees for this activity are exempted from VAT. By contrast, a third party servicer will be subject to VAT for the fees paid for its services, leading to inequality of tax treatment for the provisions of these services between the originating credit institution and other permitted servicers. |
| **5.** | Unfavorable tax treatment can create disincentives for adequate provisioning and loan write offs.<br>Tax deductions for loan loss provisions are allowed in some cases but are often subject to a cap. Tax deductions for loan write offs or for loan principal reductions are not allowed. Tax deductions for collateral sales below book value are quite rare | Tax benefits from loan loss-provisions and write-downs of loans should be crystalized so as to accommodate NPL sales. |

## C. *Administrative*

| No | Description of Issue | Proposed Resolution Action |
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| **1.** | ▪ High cost of ineffective property registration under existing system.<br>▪ Current system inefficient in allowing creditors to be informed about debtor's property. | Improvements to be introduced, with the aim to complete the centralized Land registry, while consider a fixed fee, in case of an asset registration rather than a fee proportional to the value of the asset. |
| **2.** | **<u>Public Auctions.</u>**<br><br>As of 26/5/2017, the Ministry of Justice, Transparency and Human rights, published via the Government Gazette and by Ministerial Decision (MD) the commencement of electronic auctions, in accordance with the provisions of the Code of Civil Procedure (CCP).<br><br>However, the e-auction platform has only been ready in September 2017 and therefore e-auctions are supposed to commence at the end of November 2017 | ▪ Electronic auctions should be considered as a means of encouraging participation of more bidders in an auction process and making the auction process more efficient and transparent and possibly more profitable for the seller.<br>It is considered the below proposals for improvement;<br>▪ Bank officers to be appointed as representatives of credit institutions should, in addition to legal entities and themselves (i.e. as natural persons), take the additional actions for their certification, as per the provisions prevailing in "natural" auctions.<br>▪ The Electronic Auctions System (EAS), should have functionality to ensure the possibility of separate online auctions of more than one property seized by a single seizure report.<br>▪ Also, the EAS should ensure that the auction of other real estate is ceased when the auction covers the amount of the claimant's claim and the announced creditors, as well as the costs of the execution.<br>▪ Regarding the Order of auctioning of more than one assets, the provision of MD 41756, that the person against whom enforcement is directed may, by declaring to the electronic auctioneer, who is operating no later than five (5) days before the auction, to determine the order in which the seized assets will be auctioned, contradicts with Article 964 of the Code of Civil Procedure<br>o As per the CCP, the following are provided: 'Where the auction is carried out by electronic means, the person against whom enforcement is directed shall, in so far as he/she so desires, assign to the electronic auctioneer the order in which the seized items are to be awarded no later than two (2) days before the execution electronic auction ".<br>o These two arrangements must be harmonized as the Ministerial Decision should not depart from the relevant provision of the Law. |

| No | Description of Issue | Proposed Resolution Action |
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| **3.** | Non-existence of an active platform for the purchase/ sale and valuation of NPLs. | A single hub could be created to facilitate NPL Securitization/Trading of Small /Mid Market loans which will:<br>▪ Provides easy access to SME loans for private investors<br>▪ Create transparency and liquidity for this high yield segment using high quality data<br>▪ Addresses financing needs<br>▪ Creates a new business model for smaller banks by freeing up their balance sheet<br>▪ Create world class database of private firm financials and loan pricing. |

## *D. Annexes*

### Annex 1: Performance Data regarding  Pending cases under L3869/2010

1. What is the average number of calendar days between the submission of the application and the initial (protective measures) hearing?
2. What is the average percentage of payments against the agreed installment plan that is set at the initial hearing?
3. What is the level of compliance of debtors with the payment plan set at the initial hearing;
4. What is the percentage of applicants whose default under the payment plan leads to their ebign deprived of the judicial stay?
5. What is the average number of calendar days between the initial hearing and the hearing on the substance of the application?
6. What is the average write-down of the original debt?
7. How frequent is the liquidation of debtor assets?
8. How frequent is the liquidation of prime residences?
9. What is the basis on which debtors are permitted to retain the ownership of assets beyond the scope provided by law?
10. How do courts establish the debtor’s capacity to make future payments (are there accepted practices and methods)?
11. How frequent are measures against debtors on the basis of their failure to seek or obtain employment?
12. What is the projection made by the Ministry, on the basis of available information, as to the average duration of a law 3869/2010 application?
13. What is the average time that an applicant under law 3869/2010 enjoys a stay against enforcement?