LOCAL INSIGHT
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Unwarranted legislative haste: Greece rushes through laws affecting corporate loans and credit

Nikolas Katsaros and Maria Karabella of Papapolitis & Papapolitis cast a critical eye over a new law purportedly attempting to modernise the regulatory framework regarding pledges and another introducing a digital transaction levy

Following two recent legislative initiatives by the Greek government – both introduced, discussed, and voted on at startling haste over the summer – certain changes have been introduced that affect the loans and credit landscape in Greece.

While the two new laws are unrelated to one another, their coincidental close timing licenses coverage of both in the same article.

In particular, pursuant to Law 5123/2024 (July 2024) on the Modernisation of the Regulatory Framework regarding Pledges and the Introduction of a Single Electronic Register of Pledges, a purported attempt is being made to overhaul the regime regarding the taking of security in the form of pledges over rights and claims, non-possessory pledges over chattels, and share pledges.

Separately, pursuant to Law 5135/2024 (September 2024), the provisions regarding Greek stamp duty on documents are repealed in their entirety, and a new levy is introduced in its place.

A comprehensive exposition of all the provisions of these laws is outside the scope of this article; instead, selectively presented are a few topics and concerns that may be relevant in the general context of secured loan and credit transactions from a corporate perspective (rather than that of private

lending transactions between individuals or consumer finance). All points discussed are therefore under this assumption (references to "shares" in this context are understood to be shares issued by Greek *sociétés anonymes*, as those are most relevant in the Greek context of corporate finance).

Law 5123/2024: an attempt to modernise the regulatory framework concerning pledges

The regime in Greece regarding the taking of security in the form of pledges is, in the first instance, governed by provisions of the Greek Civil Code (GCC), which, pursuant to Greece's continental civil law tradition, is the ultimate norm regulating rights in rem, and, regarding enforcement of the security, by provisions of the Greek Code of Civil Procedure (CCP).

Over these, various layers of special legislation have historically been superimposed, most notably:

- Legislative Decree 17.7-13.8.1923 (LD 1923), an archaic, obscure to the modern eye, and doctrinally distracting piece of legislation; and
- Law 2844/2000 (Law 2844), principally in relation to non-possessory pledges of chattels but also extending to pledges of claims, which also created the first register of pledges but with registration only being required (or advisable) in certain, limited circumstances.

Importantly, regarding the taking of security over cash, listed financial instruments, and financial claims, Law 3301/2004 (the Financial Collateral Law, which implements the EU Financial Collateral Directive) applies but is only relevant to limited and specific types of security takers; essentially, banks and financial services firms, as well as security agents of corporate bond loans.

The legislative proliferation did indeed result in a somewhat inelegant construct, but the market had established practices to navigate it, and, in general, the regime worked well for decades, affording certainty of substance and process to all concerned.

In any event, the self-professed objective of Law 5123 is "the creation of a unitary, cohesive, and modern legislative framework regarding in rem security in the form of a pledge". It is submitted that the law misses the mark by a long shot regarding the objectives of unity and cohesiveness, while modernity is questionable, importantly without the other two, but also substantively. The majority of the supposedly innovative provisions are, broadly speaking, partial, haphazard, and incremental reorganisations of current law, needlessly further muddling visibility and without really deciphering incumbent doctrinal and statutory riddles, while real opportunities to truly modernise the regime and expedite transactional processes were missed.

Notably, due to the manifest and totally uncalled-for legislative haste, resulting in the absence of due proofreading, the new law, as voted, falls short of even internal cohesiveness, as there are instances of erroneous internal clause cross-references.

Furthermore, at the procedural level, the introduction of a new, doctrinally purposeless, requirement regarding the henceforth mandatory registration of most pledges (other than possessory chattel pledges, which are not addressed by the new law in any material manner) in a public register, the now-so-renamed Single Electronic Register of Pledges (the Register), to be maintained by the Land Cadastre, entails additional costs, bureaucracy, uncertainty of process, and complications in implementation, at least until the market makes sense of the new rules and develops customary practices.

It will also likely cause delays in the context of closing financing transactions by adding an additional layer of involvement and extraneous party (public authority) participation in the process of conditions precedent satisfaction (whereas, under the current rules, such public authority participation is, in practice, limited to non-possessory chattel pledges).

Even regarding the effects of registration as such, though, the law is in need of consistency, as the drafting invites hesitation in certain instances as to whether registration is foundational for the formation of the pledge (i.e., affecting its creation, validity, and enforceability) or merely declaratory (i.e., only serving third-party notice/rights).

The new law's entry into force is dependent on the issuance of delegated secondary legislation by the Land Cadastre regarding the Register's actual guidelines of operation and filing process, otherwise set for December 31 2024 (if not extended by ministerial decision). Grandfathering for pledges already entered into before the law's entry into force is provided for.

Pledges over rights and claims

In this field, the principled route ought to have been to completely repeal the antiquated LD 1923 and to update and supplement the provisions of the GCC and the CCP with a view to modernising them and making those the sole, streamlined, instruments for all matters. Alternatively, and also workable, the relevant provisions of Law 2844 could have simply been updated, as a special but at least unitary statute.

Contrariwise, the new law obstinately insists on explicitly keeping in existence the relic of LD 1923, even expanding its application in certain instances, summarily repeals certain articles of the GCC, which is insolent and imprudent, and similarly abolishes certain operative provisions of Law 2844 by internally assuming their content. So much for unity and cohesiveness; reference still needs to be made to all those, ever more so than before, highly fragmented provisions.

In substance, the existing framework is only incrementally changed, other than the requirement that pledges over rights and claims must now be mandatorily entered in the Register (whereas, until now, such registration was essentially voluntary and, in practice, rarely performed).

Despite being referred to as "mandatory", it seems that registration is not formative for the pledge in this instance and is only relevant as regards third parties.

In any event, where applicable, the Financial Collateral Law will continue to be the preferred route for security takers, at least as far as security over financial claims is concerned.

Non-possessory chattel pledges

Again, not much has changed in this respect, other than more fragmentation, as the new law repeals certain provisions of Law 2844 (but not in its entirety) by internally assuming their content (here, again, a streamlined update of Law 2844 would have been more conducive to unity).

Of surprise is that while under the previous rules, registration was always understood as formative (since, here, registration/public notice indeed makes sense, substituting for physical delivery of the chattel to, and control by, the secured party), under the new law, it might seem

that registration is relevant only as regards third parties (despite again being stated to be "mandatory").

Share pledges

Non-listed shares

Regarding non-listed shares, it is not particularly comprehensible why any legislative intervention was deemed substantively necessary, as the matter is adequately regulated by law and established practices, other than the new law's overriding concern to ensure fees from registration on the Register.

Registration in this field seems totally unnecessary and serves no real purpose, and, in this instance at least, it unfortunately seems that registration is formative (and not simply declaratory), which is a very misguided approach. The net effect is that entering into, and the perfection of, share pledges will be rendered more cumbersome, resource intensive, and elusive (and expensive).

Furthermore, the choice of the Land Cadastre for the registration of share pledges (even if assumed functional) is simply odd and ill-advised, since the natural habitat for corporate matters ought to be the General Commercial Register.

Legislative intervention might have been seen as welcome in the context of enforcement, but the opportunity to set out an uninvolved and modern enforcement process over pledged shares was missed; rather, the law lazily merely regurgitates that "the rules of enforcement over chattels apply". Exceptionally welcome would have been the innovation and modernisation of expressly stipulating that the Financial Collateral Law can also apply to security over non-listed shares (the conventional understanding in the Greek market is that it cannot apply).

Listed shares

Pledges over listed shares are, mercifully, left substantially unaffected by the new law, while, where appropriate, the Financial Collateral Law applies to them.

Also thankfully, but only following market protest on this point, the new law, as voted on (in the initial draft of the bill, this was not the case), excludes pledges over listed shares from mandatory registration on the Register (although voluntary registration is introduced as available at the initiative of "anyone with a legitimate interest", which is a vague proposition).

Other substantive provisions applicable to both listed and non-listed shares regarding dividends being captured under a pledge are mere nods to long-standing customary practice, whereas, in relation to the exercise of voting rights, the new law unnecessarily repeats existing (and unrepealed) law. In that regard, reference to the same matter is now made in three pieces of legislation: the GCC, the corporate law, and the new law. So much for unity.

Law 5123/2024: the introduction of a digital transaction levy

Under this law, a comprehensive repeal of the Greek stamp duty regime is purportedly made, substituting it with a new, per the law's self-aggrandising preamble, "foreseeable and transparent tax on transactions", the digital transaction levy (DTL). The rules and practice regarding stamp duty date back to 1931, with multiple subsequent layers of secondary and supplemental legislation, academic writings, case law, and official interpretations, while it has been notorious for giving rise to frequent and significant friction between taxpayers and authorities, habitually leading to administrative litigation.

Whereas, therefore, a repeal of the antiquated, murky, and unpopular stamp duty framework might indeed be seen as welcome at first glance, and while some substantive and procedural cleanup has been achieved by the DTL, the government unfortunately fell short of expectations that a new, freshly thought-out 'transaction' tax ought to be less pervasive, more conducive to transactions, and cheaper. While the government, prior to the law's enactment, entertained a vocal mass-media promotion that "stamp duty is finally being abolished", nothing much has changed, and, in real effect, the DTL is just stamp duty by another name (and at the same applicable rates).

Speaking of the new levy's name, "digital" adds nothing to the conversation and is just a gimmicky attempt by the cabinet at a semblance of innovativeness and relevance. "Digital" simply refers to the (unoriginal) process for eventually declaring and paying the DTL electronically, as with practically all other Greek taxes now.

A recasting of stamp duty?

In its substance, the new logic of the DTL is supposedly that it applies to 'transactions', as opposed to stamp duty, which is imposed on the 'document' and subject to its 'territoriality'. Nonetheless, due to substandard drafting and a (deliberately?) confused approach, the DTL law, while in principle referring to the levy being imposed exclusively on the transactions that are expressly and specifically enumerated in the law itself, then unhelpfully makes multiple generic references to "contracts" and "documents", further reinforcing the view that the drafters' perspective and ability were confined to purely recasting the stamp duty rubrics rather than being applied to the creation of a truly fresh policy.

As regards corporate loans, similar to stamp duty, the DTL is, as a general rule, imposed at the same applicable rate as before (2.4% on the loan principal). Perhaps the only welcome provision is that the maximum DTL exposure for loans is capped at €150,000. But, still, this is not an insignificant amount, especially for SMEs, as well as in relation to intragroup routine recurring loans, cash-pooling arrangements, etc.

What has been better clarified is that the DTL applies to a transaction only when at least one of the parties has a Greek tax residence (substituting for the previous territoriality principle).

The consequence, also explicitly clarified, is that the DTL is imposed regardless of the place of signing and/or performance of the transaction. This is a deterioration from the previous situation whereby Greek corporates would take pains to have international loan agreements signed outside Greece (with the document remaining outside Greek territory) and to have the loan proceeds initially paid to, and then serviced through, foreign bank accounts, thus (hopefully) avoiding stamp duty territoriality.

The muddling of the defining lines between the DTL's logic, applying to the transaction, and that of the legacy stamp duty, imposed on the document, is nowhere more apparent than in the references to "ancillary contracts" securing the "main" transaction. In that respect, the DTL law essentially, and incredibly closely, replicates the language used in the old stamp duty provisions, stating that such ancillary contracts are subject to the DTL to the

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Maria is a partner in the banking and finance practice of Papapolitis & Papapolitis. She has extensive experience in structuring and documenting numerous types of domestic and cross-border financings, including bank and credit financing, corporate lending, shipping finance (offshore and onshore), bonds and international note issues, restructuring facilities and structured asset-backed financing, and the sale and purchase of loan portfolios, acting for the varying participants of the transactions.

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extent that the main transaction is not excluded from the DTL (or, if not excluded, the DTL has duly been paid while any such payment is deducted from any payment due under the ancillary contract).

In practice, this becomes an issue where guarantees by Greek corporates may be required in the context of an otherwise non-Greek-related loan (i.e., one between solely non-Greek parties). This situation is very familiar in international group financings where, for example, a non-Greek parent entity or financing special purpose vehicle subsidiary borrows under the (foreign) loan with guarantees being granted by the Greek members of the group.

The reasonable and principled approach ought to be that since the 'main' transaction is completely outside the ambit of the DTL, the 'ancillary' guarantee should therefore also be exempt. But the law leaves significant uncertainty and is sure to continue to cause indecision and apprehension in structuring transactions until duly interpreted (and with the attendant 'solution' to execute the guarantee document abroad now being expressly unavailable). The concern is that while, according to legal theory, tax laws must be interpreted in their narrowest sense, the Greek tax authorities invariably take the exact opposite approach. Similar concerns arise in relation to other customary security documents; e.g., pledges over Greek shares.

Bank and corporate bond loans

Importantly, and similar to stamp duty, bank loans (by Greek or international banks) and, thankfully, corporate bond loans remain excluded from the DTL.

Indicative of the government's dubious intentions in the initial draft bill, bond loans, which were not previously subject to stamp duty, would also be captured by the DTL (other than listed ones and those subscribed by banks). Had this been legislated, it would effectively paralyse everyday corporate finance in Greece, given that privately subscribed bond loans have long been the quintessential instrument for intragroup and non-bank borrowing (i.e., being a vital mechanism for the financing of Greek corporates by international investors). The government, at least in that respect, finally came to its senses but only in response to thunderous market uproar.

It is submitted that corporate loans, of all types, and attendant guarantees and security ought to be excluded from the DTL altogether, in furtherance of an unobstructed corporate loans and credit market and promoting an enhanced investment environment (as well as freeing up auditing resources at the tax authority level).

Notably, numerous and very recent administrative high court decisions have, in a principled and emphatic manner, posited that loans (of any type) should not be considered as being subject to stamp duty to the extent that they are entered into between entities that are otherwise subject to VAT (as are Greek corporates). However, the government stubbornly did not heed this call in designing the DTL; on the contrary, the government actively and vindictively changed the Greek VAT Code to ensure that such judicial interpretation can never be possible in the future.

The DTL becomes effective on December 1 2024.