

ALLEN & OVERY

SUERF BAFFI

Bocconi e-Lecture

Sovereign Domestic
Debt Restructuring:
Handle with Care

Yannis Manuelides

23 February 2022



Introduction

- **Greetings and thanks.** Who I am – a lawyer (and who I am not – economist or Hebrew prophet)
- **Topic – why it is important**
 - Balance sheets of domestic households, businesses, finance entities, government and foreign creditors interlinked
 - Domestic economy is ultimately what needs to work to pay everyone!
 - Elucidation of concepts, roles of actors, analysis of interconnectedness, normalisation of the restructuring narratives, assists in creating an overall conceptual (and even consensual) framework for debt restructuring and developing specific tools (statutory or contractual)
- **Topic – why it is timely**
 - As WB's WDR notes, relationship even more opaque because of unprecedented debt relief measures, moratoria; freezes on credit reporting; soft loans etc.
- **Local law advantage** – what is it, what are its limits? Can we legislate in advance (as with CACs) to eliminate its use?

Tools for domestic sovereign debt restructuring

- **Non-Legal** (e.g., inflation, financial repression)
- **Legal**
 - Existing
 - Ex post (after-the-event)
- **Local law advantage**
 - What do we mean by it: almost always an after-the-event interference with contractual/property rights
 - How possible: sovereign as maker of laws can create new ones
 - These laws and the rights they create will, subject to specific treaties to the contrary, be recognised in creditor jurisdictions
 - Contrast external laws which insulate creditor rights from such an interference
- **Problematic (beyond constraints)**
 - after-the-event – offends existing rights and “rule of law” more widely
 - After-the-event allows sovereign to make some winners and some losers
- **Yet accepted** in major cases – Why?
- **Other domestic law tools**
 - Tax
 - French insolvency legislation (as was?) – *débiteur en situation désespérée*
- Even existing laws have to be applied in a manner consistent with the “rule of law” and are tested by their application in the circumstances.
- Concepts such as *fairness*, *legitimate expectations*, *fair burden sharing*, *appropriate exemptions* etc., all survive because their application is perceived as appropriate in the circumstances and hence legitimate.

Local law advantage in practice – with examples from Greece and the Eurozone

- How it happened – Bondholders were asked
 - if they wanted to have CACs retrofitted by a new statute
 - if they wanted an exchange of the bonds to proceed on the basis of the decision taken with the CACs
 - Two decisions in one ballot – high threshold set to mandate Greece to proceed
- German precedent retrofitting CACs in domestic German corporate bonds
- The hurdles:
 - Constitution
 - Treaties
 - Bilateral Investment Treaties
 - European Convention of Human Rights
 - [Contractual restrictions in external law instruments]
- Greece was pursued legally everywhere – domestically, at the ECHR, and in BIT/ICSID arbitrations
- Greece prevailed everywhere most importantly at the ECHR – the *Mamatras* case

Ex-ante rules (like CACs) or ex-post Local Law Advantage?

- ECB's bond purchase programmes have made the ECB a very large holder, close in many cases to holding a blocking position should the CACs be used for a domestic sovereign restructuring
- ECB has declared that, as a holder, it will participate as an ordinary investor* but will vote to reject any sovereign restructuring plan which results in losses for it.
- This makes it very easy for strategic “holdout” creditors to block restructurings with a very small investment on their part (adding to the ECB's)
- Hence, any EZ sovereign contemplating a domestic sovereign restructuring will have to use the “local law advantage”

Guidance from “Mamatas”

- In Mamatas the applicants were investors who had objected to the Greek CAC retrofit.
 - ECHR held that “the forcible participation amounted to an interference with the applicants’ right to respect for their property”
 - Nevertheless, that interference pursued a public-interest aim, that is to say preserving economic stability and restructuring the national debt, at a time when Greece was engulfed in a serious economic crisis.
 - The applicants had not suffered any special or excessive burden
 - The bond had already been affected by the reduced solvency of the State, which would probably have been unable to honour its obligations
 - The Court also considered that the collective action clauses and the restructuring of the public debt had represented an appropriate and necessary means of reducing the public debt and saving the State from bankruptcy.
- 115. *Certes, à la date de l’émission des anciens titres détenus par les requérants, ni ces titres ni le droit grec ne prévoyaient la possibilité de la mise en oeuvre de telles clauses. La Cour ne méconnaît pas le fait que les obligations qui font sans cesse l’objet de transactions sur les marchés tant nationaux qu’internationaux peuvent être disséminées entre les mains d’un très grand nombre des porteurs. Toutefois, les clauses d’action collective sont courantes dans la pratique des marchés internationaux de capitaux et elles ont été incluses, en application de l’article 12 § 3 de la convention instituant le Mécanisme européen de stabilité, dans tous les titres de dette publique des États membres de la zone euro d’une durée supérieure d’un an (paragraphe 18 ci-dessus). Par ailleurs, la Cour admet que, s’il avait fallu rechercher parmi tous ces porteurs un consensus en vue du projet de restructuration de la dette grecque ou limiter l’opération seulement à ceux qui y avaient consenti, cela aurait contribué à coup sûr à l’échec de ce projet.*

Local law advantage forever (but within the bounds of “the rule of law”)

- Even existing laws have to be applied in a manner consistent with the “rule of law” and are tested by their application in the circumstances.
- This also applies to existing CACs or other tools we have
- Concepts such as *fairness*, *legitimate expectations*, *fair burden sharing*, *appropriate exemptions* etc., all survive because their application is perceived as appropriate in the circumstances and hence legitimate.

Bio



Yannis Manuelides

Partner – UK – London

Tel +44 20 3088 2575

Mob +44 7775 904 022

yannis.manuelides@allenovery.com

Yannis Manuelides is a London-based finance partner. He studied in the USA and the UK, qualified in England and France (but no longer practices in France).

Over the last 30 years he has worked in banking and finance transactions including project, corporate and leveraged finance, debt restructurings, securitisations and capital market transactions.

Yannis heads Allen & Overy's Sovereigns practice.

Full bio [here](#)

Questions?

Allen & Overy is an international legal practice with approximately 5,600 people, including some 580 partners, working in more than 40 offices worldwide. A current list of Allen & Overy offices is available at allenoverylaw.com/global/global_coverage.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2022. These are presentation slides only. This document is for general information purposes only and is not intended to provide legal or other professional advice.

© Allen & Overy LLP | Sovereign Domestic Debt Restructuring: Handle with Care