JONES DAY

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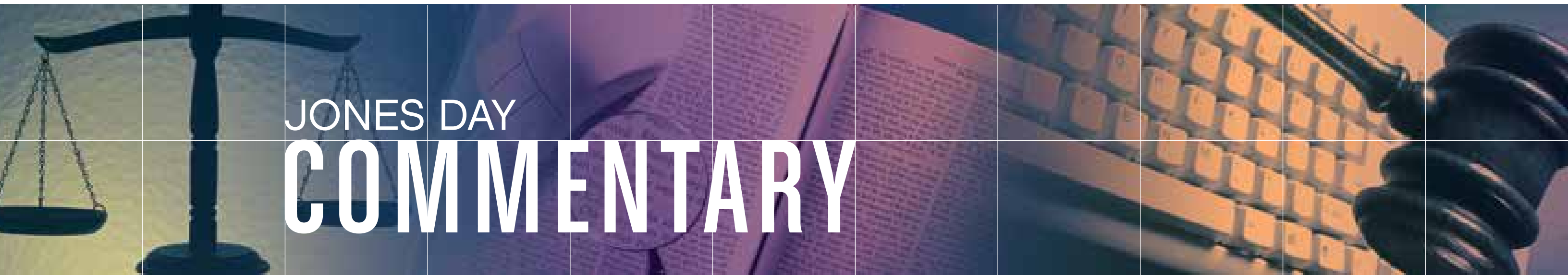

SHELTER FROM A STORM: WILL GREEK ELECTIONS HALT A EURO BREAKUP?

Whether the Eurozone storm abates or intensifies, it is not going away in the wake of the Greek election, where the New Democracy party's slim victory means the formation of a viable government will be a difficult task. With the dizzying height of individual sovereign or Eurozone-wide debt and the often accompanying apocalyptic prophesies, companies, investors, and other stakeholders may fear that there is little that can be done to protect against the vicissitudes of the Eurozone crisis. That is not right: practical steps can be taken now to prepare for a euro exit, and knowing the right questions to ask is the starting point.

The questions and issues that any business involved in the Eurozone should consider include:

LEX MONETAE AND COMMON LAW PRINCIPLES

- Can a state change its currency overnight?
- Is the sovereignty of a state over its own currency absolute? Does a state have free rein to impose exchange controls, or are such powers curbed by international treaties and the terms of relationships with international bodies such as the IMF?
- What is the impact on private arrangements of an unlawful exit from the euro?
- Is there a likelihood that under the governing law of a relevant contract, additional terms will be implied so as to facilitate the continuing efficacy of contractual obligations?

CONTRACTUAL ISSUES

- Where are the parties located, and where are the payment obligations to be performed?
- What is the governing law of the contract, and which courts have jurisdiction?
- How is the currency of the contract defined?
- What events of default are specified, and could they be modified by the principle of continuity of contracts that would generally dictate that contractual provisions continue to be valid in spite of a change in currency?

- Will a foreign court give judgment in euro notwithstanding redenomination of obligations in the exiting state?
- Can material adverse change clauses be relied upon to improve the contractual position of the foreign counterparty, or will they be trumped by force majeure provisions that might excuse a failure to perform by an affected party?

PRACTICAL FUNDING AND TREASURY ISSUES

- What happens to a guarantor of a party's euro-denominated obligations where an income stream from a counterparty in an exiting member state is relied upon to meet those obligations?
- What will be the impact of a euro exit on deposits maintained with or certificates of deposits issued by a bank in an exiting state?
- What will be the impact of a euro exit on documentary credits opened or accepted by banks in an exiting state? If goods are shipped free on board to a customer in an exiting state, how will the supplier be paid if the local currency is redenominated and exchange controls introduced?
- What will be the position of derivatives contracts where payment obligations relating to the underlying financial asset cannot be performed in the reference currency?
- What if financial assets are custodied or sub-custodied at custodians in an exiting state?
- What happens in the case of real estate in the exiting state where a foreign national relies on the rental income stream from those assets?
- Will enforcement rights (e.g., against security or collateral held in the exiting state) be affected?

STEPS TO MITIGATE THE RISKS

- Have all contracts, assets and liabilities that may be affected been identified?
- Can termination provisions, indemnities or any other contractual provisions be relied upon to exit relationships or accelerate payments from counterparties who may become a concern?
- What opportunities can be identified to renegotiate contracts that may be affected?
- What funding arrangements may be affected, and can alternative arrangements be put in place?
- Is it appropriate to move any investments, bank accounts or funding sources in anticipation of the imposition of exchange controls?
- Would a state's exit from the euro also precipitate a departure from the European Union, such that free movement of capital, persons and goods within the EU might no longer apply to that state?

Sovereign default, currency redenomination or the imposition of sweeping exchange controls overnight is certainly not new. The first recorded default goes back at least to the fourth century B.C., when 10 out of 13 Greek municipalities in the Attic Maritime Association defaulted on loans from the Delos Temple. More recently, Argentina dropped the peso-U.S. dollar peg and defaulted on its sovereign debt in 2002. Venezuela, affected by the Argentinian default, faced a currency crisis that led to a default in 2003, and Russia defaulted in 1998. In that same year, Malaysia imposed overnight capital controls on the ringgit, leading to an immediate liquidity crisis in the offshore FX market.

Jones Day has significant experience in dealing with all aspects of the fallout across numerous jurisdictions of sovereign default or currency redenomination.

We are advising our clients to prepare and encourage them to:

- Analyse their valuable relationships and how they are documented to identify the exposures within them to payment obligations coming out of Greece, Portugal or any other vulnerable Eurozone member states.
- Consider how contracts would operate in the event of redenomination of payment obligations under them.
- Pursue preemptive measures that might be taken now in order to limit the risk when it crystallises—for example, amending contract terms or reducing exposure to potentially affected counterparties in the short term.
- Implement a contingency plan that prescribes the actions they can take if the crisis worsens—in particular, to consider those relationships that may become contentious or end up in dispute in the event of a Eurozone departure.

LAWYER CONTACTS

Jones Day's euro crisis team in London and across Europe is available to assist clients to address these and other issues arising from the Eurozone crisis. Please contact your principal Jones Day contact or any of the lawyers named below if you require assistance. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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