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New legislation in Greece for the management and transfer of non-performing loans (art. 1-3 of Law 4354/2015)

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I. INTRODUCTION

With Greece entering its seventh year of sovereign debt crisis and its banking system under mounting stress, the legislator has recently introduced a secondary market for non-performing loans (**NPLs**) by virtue of Law 4354/2015¹ (**Law**). The Law aims at safeguarding the financial stability of the country by enhancing bank liquidity and facilitating Greek businesses² currently unable to service their debt.

Eligibility Criteria

The Law provides for two types of companies: a) companies managing NPLs (**NPL Management Companies**) and b) companies acquiring NPLs (**NPL Transfer Companies** and, collectively with the NPL Management Companies, the **NPL Companies**). A strict regulatory regime is imposed on the NPL Companies, which are required to operate in accordance with the existing Banking Code of Conduct³ and are subject to high professional standards.

An NPL Company must be in the form of a corporation (Société Anonyme), seated either in Greece or in the European Economic Area (in the latter case, operating in Greece through a branch). In either case, the management and/or the transfer of NPLs, as the case may be, must be included in the statutory scope of the NPL Company.

NPL Companies fall within the licensing and supervisory scope of the Bank of Greece (**BoG**), which grants them a special operation license (**License**) after a thorough examination of specific criteria with regard to their capital adequacy, their reliability and the suitability/competency of their management. These standards aim at safeguarding financial stability as well as compliance with the rules on competition and anti-money-laundering legislation. The Law authorizes the BoG to issue an Act (**BoG Act**) setting out the criteria, conditions and all supporting documentation required for the granting of a License.

1. Law 4354/2015: Management of non-performing loans, salary regulations and other urgent provisions implementing the fiscal targets and structural reforms (Government Gazette Bulletin A' 176/16.12.2015).

2. As well as residential mortgage debtors and consumers.

3. Banking Code of Conduct, enacted by Decision no. 116/25.08.2014 of the Credit and Insurance Committee of the Bank of Greece pursuant to article 1 para 2 of Law 4224/2013 (Government Gazette Bulletin A' 288/31.12.2013).

In order for a License to be issued, the BoG must ascertain that:

- (a) the NPL Company is in a position to fully comply with the provisions of the Law;
- (b) its shareholders and directors have good reputation, sufficient knowledge, skills and experience to exercise their powers and to satisfy the capability and suitability criteria, as these shall be determined by the BoG Act;
- (c) its organizational structure allows it to provide services in accordance with the Law;
- (d) its business plan supports the achievement of national financial recovery and development; and
- (e) there are no professional or family relations between persons involved in the management and/or ownership of the NPL Company and any other persons holding high political offices or administrative positions in the supervising authority, so as to obstruct an effective conduct of supervision.

Licensing Procedure

Following a mere opinion issued by an advisory committee, the BoG grants the License within a deadline of 20 working days as of the next day of the filing of the relevant application; or, in case the application is incomplete, within 20 days as of the filing of the additional information, details or documents required. A list of all licensed NPL Companies will be available on BoG's official website.

Supporting Documentation

A License application is accompanied by the following documents:

- (a) the NPL Company's Articles of Association (with all amendments);
- (b) the identity of: (i) persons participating directly or indirectly to the applicant NPL Company, (ii) persons having special rights in the administration and management thereof by virtue of either the terms of the Articles of Association or a shareholders' agreement, (iii) shareholders participating by 10% or more;
- (c) the identity of the members of the Board of Directors or the managers;
- (d) questionnaires completed by the persons set forth in paragraphs (b) and (c) above, in order for the BoG to evaluate their capability and suitability criteria, as such will be elaborated by virtue of the BoG Act;
- (e) the organizational structure of the NPL Company;
- (f) the business plan of the NPL Company;
- (g) a thorough report recording in detail the basic principles and methods applied for the management of claims; specific reference shall be made to borrowers who fall within socially vulnerable groups in accordance with the provisions of the Banks' Code of Conduct of article 1 para 2 of L. 4224/2013 (A' 288) and L. 3869/2010 (A'130) on the debt arrangement of heavily indebted natural persons, as in force; and
- (h) any additional information and/or files that the BoG may consider important for the evaluation of the application.

Regulatory Obligations

The shares of an NPL Company must be registered (unless they are listed on an exchange). Especially for NPL Transfer Companies, they shall maintain at all times a minimum paid-up share capital of an amount of **one hundred thousand** (100,000) Euros. Such share capital may be reduced only provided that there is an action plan for the termination of the NPL Transfer Company's activity approved by the BoG.

A prior permit must be obtained by the BoG for material equity changes in an NPL Company. In particular, in the event that a natural or legal person either intends to (a) acquire or dispose directly or indirectly a qualifying holding

to an NPL Company, or (b) increase or decrease directly or indirectly its qualifying holding so that the percentage of voting rights or the capital that it holds, directly or indirectly, reaches or exceeds or is reduced below 20%, 30% or 50% of the NPL Company, or results in the NPL Company becoming or ceasing being its subsidiary, then the BoG should be notified in advance; the BoG possesses the discretionary power to either permit such action, possibly setting a relevant deadline thereto, or not permit it at all, if it deems this person unsuitable for the proper and prudent administration of the NPL Company.

The BoG is also entitled to require the removal of an individual as a member of the NPL Company's Board of Directors if the BoG considers that such individual is not competent to act as a Board member.

The NPL Company is required to submit to the BoG a copy of its balance sheet, P&L statement and any other information that the BoG may deem necessary for the proper exercise of its supervision. The manner, frequency, submission dates and reports, as well as the type of the required information shall be determined by virtue of the BoG Act.

Moreover, the BoG may conduct in situ investigations and the NPL Company is required to provide unlimited access to its premises and make available to the inspectors all of its books, documents and records concerning the NPL portfolio.

NPL Companies are required to pay a fee to the BoG as consideration for the latter's supervisory activities (the level of which shall be determined by the BoG Act).

Revocation/Suspension of the License

A License may be revoked by the BoG in the following cases:

- a. the NPL Company has submitted or published false or misleading data in order to obtain the License or for any other reason;
- b. the conditions set by the Law for the lawful operation of the NPL Company are no longer fulfilled;
- c. the NPL Company has breached the Law or any relevant act issued pursuant to the Law and/or continues to commit such breach;
- d. the NPL Company is in breach of money laundering regulations.

Instead of revoking it, the BoG may elect to **suspend** the License, setting out a reasonable time for the NPL Company to comply. This is the case when breaches of the Law or any other act issued by the BoG or the terms of the agreement for the transfer or management of NPLs have been ascertained, which are nevertheless not of such severity to warrant revocation. The suspension may be revoked if the BoG finds that the NPL Company has complied with the BoG's initial recommendations; on the contrary, if the NPL Company fails to remedy the breaches, the BoG may extend the suspension period or revoke the license.

An NPL Company may not enter into new agreements for the transfer or management of NPLs if its license has been revoked or suspended. If an NPL Company decides to terminate its activities, it submits a detailed action plan for the cessation of its operations, which must provide for the transfer of its obligations; the above are subject to the BoG's preliminary review.

II. NPL Management Agreements

The management of NPLs which exceed 90 days may be assigned to an NPL Management Company by means of a written management agreement. In case the same borrower holds other performing loans, the obligations from such loans may be as well assigned for management.

The management agreement must include the following minimum content:

- a. the NPLs to be managed and the stage of non-performance that each one of them has reached;
- b. the scope of management, which may particularly include legal and accounting monitoring, collection, negotiation with the borrower and conclusion of settlement agreements pursuant to the corresponding provisions of the Greek Civil Code or restructuring and arrangement agreements in accordance with the Banking Code of Conduct as amended and in force, as well as any other management actions as provided in the applicable legislation; and
- c. the management fee payable, which in any case cannot be passed on to the borrower.

The management agreement is to be notified to the BoG, which conducts an *ex-ante* review, before it enters into force.

Protective Provisions

One of the pivotal principles of the Law is that the assignment of management of the NPLs (as well as their transfer) may not result in the erosion of any substantive and/or procedural rights of the borrower or the guarantor. Moreover, the Law provides for the protection of consumer rights and requires all NPL Companies to operate pursuant to the applicable regulations on “Consumers Protection”, as applicable and in force from time to time, and take special care for the socially vulnerable groups in accordance with the Banking Code of Conduct and other applicable legislation.

NPL Management Companies may further subcontract specialized companies operating under Law 3758/2009 (non-performing debt notification services) or companies with similar scope of business operating in a member state of the European Union or the European Economic Area to proceed to the respective notifications to borrowers of NPLs.

III. NPL Transfer Agreements

On the basis of a written sale and transfer agreement, NPLs exceeding 90 days may be sold and transferred to an NPL Transfer Company or to credit and financial institutions⁴.

The NPLs may be sold in units or as a group; NPLs may be bundled and sold with other claims against the same borrower, including claims from performing loans.

Moreover, NPLs may be transferred along with any ancillary or security rights such as mortgages, pledges and guarantees, in accordance with the provisions of the Greek Civil Code or with any other rights, provided that they are associated with the NPLs. In case a group of claims is transferred, article 479 of the Greek Civil Code (liability incurred by the transferee) for debts relating to the assets transferred does not apply.

4. Transferors of NPLs may be: (a) licensed credit institutions in Greece; (b) Greek branches of foreign credit institutions; (c) special purpose companies of article 10 of Law 3156/2013 (relating to securitization structures); and (d) NPL Transfer Companies.

Sale Procedure - Registration

In order for the NPLs to be offered for sale, the serving of an extrajudicial notice to the concerned borrower and, if applicable, to any guarantor to settle their outstanding obligations is required. Such notice should have been effected **within the last 12 months** prior to the offer. This provision does not apply, however, in case of disputed claims, adjudicated claims or claims against “non-cooperating borrowers” (as the term is defined in the Banking Code of Conduct).

In order for the sale and transfer agreement to take effect, a summary thereof, containing its main terms, must be registered with the competent Pledge Registry pursuant to Law 2844/2000. Following such registration, the borrower and, if applicable, any guarantor, should be notified by any appropriate means. Any non-assignment clause between the transferor of NPL and the borrower may not be raised against the NPL Transfer Company.

Suspension of application for certain “vulnerable categories of borrowers”

The sale and transfer of NPLs relating to consumer loans, loan agreements secured by mortgages or mortgage prenotations on primary residences, loans to SMEs as well as loans guaranteed by the Hellenic Republic has been suspended until the 15th of April 2016. A regulatory framework covering the transfer of these types of loans is expected to have been enacted by that date.

IV. Concluding Remarks

The Law introduces a platform for the establishment of a distressed debt market in Greece. There can hardly be any doubt that high levels of NPLs hold down credit growth and reduce overall economic activity. In Greece, where unemployment remains steadily over 25%, a dynamic NPL market is expected to resuscitate an ailing economy and provide a stimulus for positive growth.

We see a remarkable appetite of international distressed investors to participate in the Greek NPL playfield, and we expect high levels of activity in 2016 and beyond. The much anticipated Act of the Bank of Greece (a draft was published in February for consultation purposes) will hopefully clarify the regulatory framework and accelerate workouts of nonperforming loans, opening space for new productive lending.

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