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# Secondary legislation opens path for Servicers and Purchasers of Greek NPLs to acquire license by the Bank of Greece

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As mentioned in our previous briefing paper, New Regulatory Framework for NPLs in Greece, newly introduced Law 4354/2015 ("**NPLs Law**") works as an umbrella law, setting the regulatory framework for the establishment and operation of special purpose entities duly licensed for servicing NPLs ("**Servicers**") and acquisition of NPLs ("**Purchasers**"), whilst details of such framework are to be further specified by separate Acts of the Bank of Greece.

On 8.3.2016 Bank of Greece issued the Act of its Executive Committee No 82 prescribing the procedure and requirements for the establishment of Servicers and Purchasers of NPLs (the "Act").

1. Authorization process for Servicers and Purchasers of NPLs.

The applicants can request the Bank of Greece ("BoG") to issue an authorization regarding: (a) servicing loans on arrears, (b) servicing and purchasing loans on arrears. Finally, the above types of authorization can be coupled with a special permit for granting new loans.

The applicants can be:

(i) companies in the form of sociétés anonymes established in Greece, whose purpose consists of, inter alia, servicing, or purchasing NPLs, or both servicing and purchasing NPLs as the case maybe;

(ii) regulated institutions established in Greece; and

(iii) NPLs purchasers or servicers established in a Member State outside the European Economic Area.

**A**. As regards applicants under category (i) the Act further defines the criteria for granting the authorization introduced by the NPL Law, by requesting the following individuals to fill in different types of questionnaires aiming to an assessment of the compatibility and suitability of said individuals ("fit-and –proper test"):

a. the shareholders who hold directly or indirectly shares or voting rights representing a percentage exceeding 10% or the minimum threshold as each time defined by the law. The Act clarified the term "indirectly" by referring to control as defined in Regulation 575/2013 on prudential requirements for credit institutions and investment firms, which is exercised through intermediary entities;
b. the individuals which are included in the 10 major shareholders of the company in case the number of the individuals above under (a)are less than 10;
c. the individuals, who although do not fall under (a) or (b) above exercise control through written or other agreement or through concerted practices;

d. the members of the Board of Directors;
e. the head of the Internal Control Systems; and
f. the person in charge for money laundering purposes.

Apart from the individuals, legal entities which fall within the categories above under (a), (b) or (c) should also file questionnaires, notwithstanding the obligation of the physical persons, who control such legal entities, either directly, or indirectly through intermediary entities. Listed companies are excused from the above disclosure requirements regarding their shareholders under (a) and (b).

**B**. In addition, the applicant companies under (i) above should submit:

a. statutes of the company;
b. a business plan with a detailed outline of all operations related to servicing or purchase of loans including a forecast of the basic financial measuring of at least 2 years or provision of an outsourcing agreement assigned by specific credit institution of an equal term. It is worth noting that the Act contains no explanation on the -rather uncustomary for companies not serving public interest- requirement set forth in the NPLs Law regarding the ascertainment by the Bank of Greece of the applicants contribution to Greece's economic recovery and development.
c. blueprint of the management structure and the personnel including the Committees which are mandatory as per requirements of BoG in line with requirements under BoG Act 2577/2006 on Internal Control Systems of credit and financial institutions ( see below under 7),
d. description of the group that the company may participate.
e. a manual setting forth:
   (i) the policies for avoidance of conflicts of interest;
   (ii) the accounting and information systems;
   (iii) the methodology of administration, the criteria of prioritization and classification of the portfolio, the procedures of handling borrowers with common creditors, as well as the administration of portfolio on behalf of several credit institutions. In addition, in case that the applicants will use forbearance and restructuring measures, the above manual should also include the criteria of assessment of suitability of such measures, the criteria of assessment of the maximum repayment ability of an individual debtor as well as the assessment of the viability of a legal entity by application of the Code of Conduct on arrears handling introduced by BoG;
   (iv) policies of communication with borrowers taking into account the requirements of Law 3758/2009 on Debtor Briefing Companies;
   (v) criteria for selection of any suppliers;
   (vi) money laundering policies.

Companies that act solely on behalf of regulated credit or financing institutions are excused from submitting documents under (e) (iv) – (vi) above. In assessing systems, procedures and methods to be applied by applicants, BoG takes into account guidelines, opinions and technical standards issued by the European Banking Authority and may apply any such requirements, especially with regard to policies under (e) (iv)-(vi) above, in proportion to the diversity of portfolios and the amount of the claims under NPLs.

**C**. Additional requirements for Purchasers of NPLs and for companies granting new loans

Applicants that wish to obtain an authorization both for servicing and purchasing NPLs, apart from the above documents under A and B, are obliged to provide evidence that a minimum capital up to 100.000 euros, or up to any other threshold each time provided by law, has been duly paid up in cash.

If applicants wish to obtain a license to grant new loans to borrowers of NPLs, relevant application should include, apart from the documents above under A and B, strategy, policies, procedures and rules that should apply to the granting of new loan by a Servicer, not authorized to acquire relevant claims out of NPLs and the paid up capital of the applicant should be equal at least to the amount each time prescribed for factoring companies, currently 4, 5 million Euros. Granting of new loan

by such Servicer is subject to the prior consent of the owner of the claims out of said NPL. In addition, the refinancing should be part of a restructuring plan approved by the competent administrative bodies.

2. Authorization Process for regulated entities

In case the applicants are:

- financing institutions established in Greece;
- factoring companies;
- consumer credit companies; and
- leasing companies.

which are regulated and supervised by the BoG, documents above under B (a), (b), (c ) and (e) appropriately adjusted should be submitted.

3. Authorization for Purchasers or Servicers established in a Member State outside the European Economic Area.

Same requirements under 1 apply for such category of applicants including the minimum capital requirements applying for purchasers of NPLs and for companies granting new loans. In addition, should such companies be regulated entities in their home country, the express consent by the competent supervisory authority of such country is also required for the establishment in Greece.

4. Purchasers and Servicers established in a Member State within the European Economic Area.

NPLs Purchasers or Servicers established in a Member State within the European Economic Area, which are subsidiaries of a credit or financing institution holding an EU passport with the requirements of Directive 2013/13 and relevant Law transposing such Directive in Greece (Law 4261/2014, articles 34 and 41) may operate in Greece through a branch, subject to a prior notification to the Bank of Greece.

5. Acquisition of equity in Servicers and Purchasers

The Act further specifies the supervisory powers of BoG in cases of direct or indirect acquisition of a participation up to or exceeding 20%, 30% or 50% of the share capital of a Servicer or Purchaser or a participation that has as a result the qualification of said companies as subsidiaries of the acquirer, as well as in respect with the criteria of the assessment of individuals by BOG either during the initial authorization process or due to a change of an individual initially assessed or at any time at the initiative of BoG.

6. Minimum Content of Servicing Agreement

A hard copy of the Servicing Agreement should be submitted to BoG prior to its execution, either by the credit or financing institution, which is subject to BoG's supervision and assigns the servicing, or in all other cases by the Servicer itself.

The Servicing Agreement should contain the following as a minimum:

- set of information provided by NLP Law1;
- description of the methods and procedures mentioned above under 1. B (e) above;
- provisions for the secure and unhindered transfer of all data regarding serviced claims, clearly specifying the obligation of the Servicer to inform data subjects.
- provisions regarding approval by the competent bodies of the parties
- to the extent that the party assigning the servicing of NPLs is a credit or financing institution, which is subject to BOG's supervision, descriptions regarding monitoring of operational and credit risk in compliance with BoG Act 2577/2006, which determines the organization, the internal control mechanisms and the management functions of credit and financial institutions, as well as to Executive Committee Act 42/200142 as in force. In addition, the Servicing Agreement should also comply with

[1] NPL Law provides that the Servicing Agreement should include a description of the serviced claims, an outline of the administration actions that will be undertaken by the Servicer and the amount of the servicing fee.

[2] Decision 42/2014 provides for independent unit of each credit institution for the administration of loans in arrears and non-performing loans, the establishment of a separate procedure for the administration thereof, appropriate IT systems and reports to the management of the credit institution and BoG.

the minimum content provided by BoG Act 2577/2006 with regard to all outsourcing agreements executed by credit or financing institutions which are subject to BOG's supervision.

7. Organizational and Compliance Requirements

BoG may request the applicants under categories 1, 2 and 3 above to apply an operational and accounting segregation of their activities in relation to the servicing and/or acquisition of NPLs as the case maybe from other parallel activities. In addition, applicants under 1 and 3 above will need to comply with requirements set by BoG Act 2577/2006 on Internal Control Systems of credit and financial institutions. This means that the applicants under 1 and 3 above should maintain separate units and committees in their organizational structure similar to credit and financial institutions. The only derogation is that they will not need to have a separate unit and Committee regarding Risk Management. In addition, these entities would need to comply it the reporting requirements which are applicable for credit institutions. On the other hand credit institutions with the objective of compliance with Internal Control and NPL management requirements ( as introduced by the Executive Committee Act 42/30.5.2014) need to address in writing and following approval by their credit institution governance and policies issues, when they assign servicing or disposal of NPLs to Servicers or Purchasers.

NPLs Servicers and Purchasers should comply with Decision No. 116/25.8.2014 of the Credit and Insurance, Affairs Committee of the Bank of Greece establishing a code of conduct for the management of NPLs (the Code of Conduct) and resume the written communications with the borrowers prescribed by the Code of Conduct taking into account any previous stages already taken place. If the procedure provided by the Code of Conduct has been completed and no settlement solution has been achieved, although the borrower has been qualified as cooperative3, any repetition of the procedure should be coupled with an updating of the assessment of the maximum current and future repayment ability of an individual debtor as well as the assessment of the viability of a legal entity.

NPLs Servicers and Purchasers should provide borrowers with minimum information regarding their loans provided by BoG Act 2501/2002 applying to credit institutions. Any penalty imposed to NPLs Servicers and Purchasers under the consumer protection law will be taken into account by BoG in relation to the assessment of the regulatory compliance of said companies. Finally, NPLs Servicers and Purchasers are bound by any money laundering regulations issued by BoG.

8. Conclusion

The Act confers very broad supervisory authorities to BoG whilst it sets strict governance and organizational requirements to NPLs Servicers and Purchasers. The licensing procedure ensures disclosure of shareholders and officers up to the ultimate beneficial owners and comprehensive information for BoG to assess the application. Hence, the Act ensures safeguards for the rights of borrowers of the loans and soundness of the legal environment in which NPLs Servicer and Purchasers will operate. Nevertheless, there are still more steps towards a viable solution to the NPLs' issue, which should address more legal amendments and reforms, including amendments to the NPL law ( as indicated in our previous briefing paper) and certainly an enhancement of the NPLs resolution toolkit. In any case, the NPLs problem looks like an equation which requires three variables in order to be solved, namely the banks, the borrowers and the external investors. The extent, that current framework and any future legislative initiative will help the interaction

[3] A debtor is considered cooperating if: (i) it provides its creditor with its own or its representative's contact details; (ii) it is available to communicate with its creditor and reverts with honesty and clarity on its creditor's calls and letters within 15 business days;(iii) it notifies its creditor fully and honestly of its current economic condition within 15 business days from any change thereto or from the relevant creditor's request; (iv) it communicates fully and honestly to its creditor any information that may significantly impact its economic condition within 15 business days from the date it obtained such information; and (v) it consents to explore any alternative options for the restructuring of its debt.

between all parties and will attract the interest of the investors, remains to be seen.

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