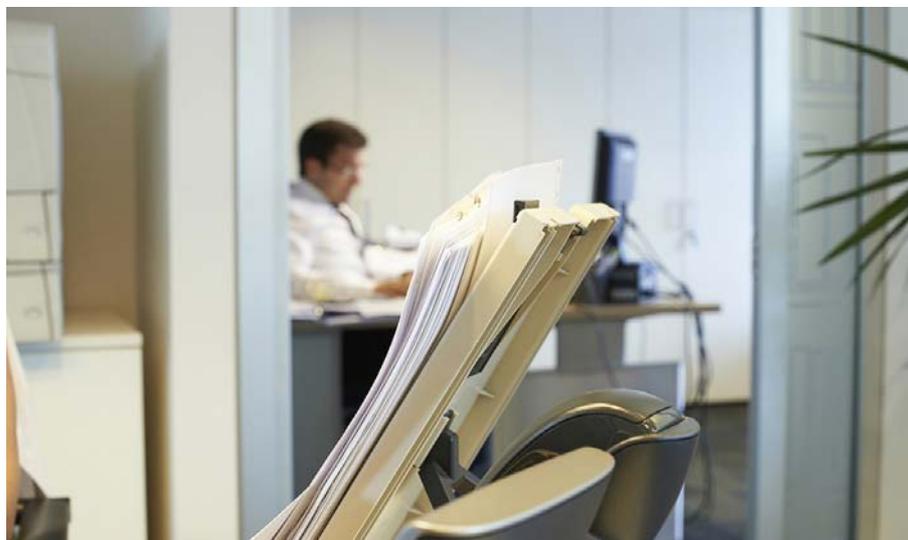


BRIEFING

NEW REGULATORY FRAMEWORK FOR
NON-PERFORMING LOANS IN GREECE
DECEMBER 2015

- GREECE HAS OPENED THE WAY FOR THE DEVELOPMENT OF A SECONDARY MARKET FOR NON-PERFORMING LOANS WITH THE INTRODUCTION OF THE NPL LAW
- THE NPL LAW ENTERED INTO FORCE ON 16 DECEMBER 2015



“THE NPL LAW IS NOT ONLY AIMED AT STABILISING THE BANKING SECTOR BY PROVIDING IMMEDIATE LIQUIDITY TO THE RELEVANT CREDIT INSTITUTIONS, BUT ALSO AT ASSISTING DEFAULTING BORROWERS TO RESTRUCTURE THEIR DEBTS MORE EFFICIENTLY.”

Greece has opened the way for the development of a secondary market for non-performing loans with the introduction of Law 4354/2015 (the “NPL Law”), which entered into force on 16 December 2015. The NPL Law is not only aimed at stabilising the banking sector by providing immediate liquidity to the relevant credit institutions, but also at assisting defaulting borrowers to restructure their debts more efficiently.

In particular, the NPL Law sets out the regulatory and legal framework for non-performing loans in Greece either to be managed by specialised non-performing loan asset management companies (“NPL AMC”) or to be transferred to other credit or financial institutions or NPL AMCs. The NPL Law also sets the minimum requirements for the establishment and operation in Greece of NPL AMCs. All the relevant market under development shall be supervised and regulated by the Bank of Greece (“BoG”).

In accordance with articles 2 and 3 of the NPL Law, any debt receivables under loan or credit agreements which are due and unpaid for a period of more than 90 days fall within the definition of a non-performing loan (a “NPL”)¹.

Management of NPLs

Management agreement

The management of NPLs may be assigned to NPL AMCs by virtue of a written

¹ The definition of non-performing loans is in line with the respective definition included in the technical standards of the European Banking Authority on Non-Performing Exposures and Forbearance, which provides consistent indicators of asset quality of banks across the European Union.

management agreement; if a distressed borrower holds other loans that are still performing, the receivables under these performing loans may also be assigned, but only together with that borrower's NPL(s).

The agreement for the assignment of a borrower's NPL management must include the following information as a minimum²:

- a description of the receivables that will be under management;
- an outline of the management actions that will be undertaken by the NPL AMCs, such as the legal monitoring of debts or the monitoring of accounts, the collection of debts, any negotiations to be carried out with the borrowers, the entry into settlement agreements in accordance with the provisions of the Greek Civil Code or any debt settlement arrangements in accordance with the Banking Code of Conduct, as well as any other management actions as provided in the applicable legislation; and
- the amount of the management fee, which under no circumstances may be passed on to the borrowers whose debts will be managed.

The BoG is to be notified of each management agreement by receipt of a hard copy. The BoG will be responsible for the preliminary review of these agreements before they enter into force.

“THE NPL LAW ENTITLES THE NPL AMCs TO BRING ANY LEGAL ACTION AND PROCEED TO ANY OTHER JUDICIAL ACTION FOR THE COLLECTION OF THE DEBTS WHICH THEY HOLD UNDER MANAGEMENT...”

Court proceedings

The NPL Law entitles the NPL AMCs to bring any legal action and proceed to any other judicial action for the collection of the debts which they hold under management, as well as to initiate, attend or participate in any pre-bankruptcy rehabilitation or insolvency proceedings and procedures for debt settlement or special administration in accordance with Law 4307/2014³. In all such court proceedings, the NPL AMCs will appear as non-beneficiary parties and any relevant judgement shall be binding upon the lenders of the relevant loans.

Protective provisions

The NPL Law includes protective provisions with regard to the borrowers' rights. In particular, it explicitly prohibits the erosion of any rights (substantive and/or procedural) of the borrower whose debts are to be managed under a management agreement; the same is provided in relation to any guarantors. What is more, the law provides for the protection of consumer rights; it is stipulated that Law 3758/2009 relating to notifications to borrowers for debts in arrears is applicable to the NPL AMCs. The NPL AMCs may subcontract the specialized companies operating under Law 3758/2009 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 the borrowers related to NPLs.

Sale and transfer of NPLs

Sale and transfer agreement

As an alternative to management, NPLs may also be sold outright and transferred to the NPL AMCs or to credit and financial institutions, by virtue of a written sale and

² A relevant BoG Act setting out the detailed provisions which must be included in the agreement for the assignment of the management is expected to be issued shortly.

³ This Law introduced new pre-bankruptcy procedures for businesses and was enacted on 1 November 2014.

transfer agreement. NPL receivables can be sold as units or in groups together with other assets, including receivables under performing loans; however, any group of claims to be transferred must necessarily include NPLs. Additionally, receivables may be transferred along with any ancillary or security rights («*παρεπόμενα δικαιώματα*»), such as mortgages, pledges and guarantees, in accordance with the provisions of the Greek Civil Code (“GCC”) or with any other rights, provided that they are associated with the receivables. In the event that a group of claims is transferred, article 479 GCC providing for the liability of the transferee for debts relating to the assets transferred does not apply.

Entities that may act as sellers in these agreements are:

- credit institutions operating in Greece under a license from the BoG;
- Greek branches of credit institutions which are established outside Greece;
- special purpose companies operating under article 10 of Law 3156/2003 relating to securitisation structures; and
- NPL AMCs.

Obligation for prior notification

NPLs may be offered for sale only on condition that the selling entity has sent an extrajudicial notice to the relevant borrower and, if applicable, any guarantor to settle their outstanding debts at least 12 months prior to the sale; this provision does not apply in case of disputed claims, adjudicated claims or claims against borrowers that are deemed to be non-cooperating pursuant to the Banking Code of Conduct. The notice which starts the 12-month period may only have been sent to the borrowers after the NPL Law came into force.

“THE BORROWER’S
SUBSTANTIVE AND/OR
PROCEDURAL RIGHTS MAY
NOT BE PREJUDICED AS A
RESULT OF THE SALE.”

Registration requirements

A summary of the sale and transfer agreement, containing its main terms, must be registered with the competent pledge registry in the relevant public registry books which are kept in accordance with Law 2844/2000, in order for this agreement to take effect. Following such registration, the relevant borrower and, if applicable, any guarantor should be notified by any appropriate means.

Any non-assignment agreement between the credit institution or the special purpose company of article 10 of Law 3156/2003 acting as the selling entity of the NPL and the borrower may not be raised against the entity acquiring the NPL.

The borrower’s substantive and/or procedural rights may not be prejudiced as a result of the sale.

Suspension of applicability

The sale and transfer of NPLs relating to consumer loans, loan agreements secured by mortgages or mortgage prenotations on primary residences, loans to small and medium-sized companies⁴ as well as loans guaranteed by the Hellenic Republic has

⁴ The definition of small and medium-sized enterprises (SMEs) is set out in the Commission Recommendation 2003/361/EC, according to which, an SME must have the following three characteristics: it must have less than 250 staff, a turnover of equal to or less than EUR 50 million, and an annual balance sheet total of equal to or less than EUR 43 million.

“THE NPL LAW REQUIRES THAT THE MANAGEMENT AND/OR TRANSFER OF RECEIVABLES RELATED TO NPLs BE UNDERTAKEN BY SPECIALISED NPL AMCS LICENSED BY THE BoG.”

been suspended until the 15th of February 2016. A regulatory framework covering the transfer of these types of loans is expected to have been enacted by that date.

Non-performing Loan Asset Management Companies

The NPL Law requires that the management and/or transfer of receivables related to NPLs be undertaken by specialised NPL AMCs licensed by the BoG.

Status of eligible companies

A company eligible to obtain such a license must be incorporated in the form of a société anonyme with its registered seat either in Greece or in a Member State of the European Economic Area, in which case it must be legally established in Greece through a branch. The shares must be registered, unless they are listed, and the management of NPLs must be included in its scope of business. In addition, the NPL Law requires that any company acquiring receivables related to NPLs must keep a minimum share capital of €100,000 at all times.

In order for the BoG to exercise its supervising activities on the NPL AMCs, the NPL Law includes an obligation for the NPL AMCs so that they are required to: (i) notify the BoG about any changes in the share capital participation of their shareholders, and (ii) to provide copies of their financial statements to the BoG. The BoG is also entitled to require the removal of an individual as a member of the company's Board of Directors if it ascertains that he/she is not competent to act as a Board member.

Furthermore, under the requirements of article 9 para.2a of the Greek banking law (Law 4261/2014), NPL AMCs are entitled to obtain a license for the granting of new loans or credits to borrowers of NPLs. In particular, the NPL AMCs are entitled to obtain a license for the granting of new loans or credits to borrowers whose NPLs they have acquired for purposes of refinancing these NPLs, whereas the NPL AMCs are entitled to obtain a license for the granting of new loans, subject to prior written consent of the legal beneficiary of the NPLs.

Licensing procedure

The NPL Law provides for the necessary documentation which is to be supplied alongside the application when it is submitted, as well as the criteria which must be met for the BoG to grant that license⁵.

In the event that the BoG ascertains that these criteria have been met, the license will be granted within 20 business days commencing from the day the application was submitted and the relevant file has been found to be complete (i.e. no additional documents or information are requested). The license will thereafter be published in the Government Gazette, as well as on the BoG's website⁶.

The NPL AMCs are obliged to pay an annual fee to the BoG covering all expenses relating to the BoG's supervision activities over the NPL AMCs; the amount of this fee as well as any other relevant information will be set out by virtue of a separate BoG Act.

⁵ A relevant BoG Act setting out in more detail the criteria, the conditions, the documentation and all other documents required for the granting of the license is expected to be issued.

⁶ If the above criteria are not met, the BoG refuses to grant the license and notifies the company accordingly; the said decision should be justified. It should be noted that the BoG may also refuse to grant the license if it ascertains that the company has been incorporated for money laundering purposes.

Criteria for a license to be granted

It is stipulated that the BoG will grant the license if it has ascertained that:

- the eligible company is in a position to fully comply with the law;
- the eligible company's shareholders and advisors have good reputation, adequate knowledge, skills and experience to undertake the actions within their powers and they fulfil the criteria of competency and appropriateness which are set out in the relevant BoG Act;
- the eligible company has a structure appropriate for the provision of these services;
- the achievement of economic recovery and development is among the targets of the eligible company's business plan; and
- no shareholders (holding at least 10% of the share capital), persons holding (directly or indirectly) participation rights in the company or with special rights in the company's management, as well as the members of its Board of Directors, are related to any politically exposed individuals or individuals holding executive positions at the regulatory authority.

“THE LAW REQUIRES THE SUBMISSION OF A COMPREHENSIVE REPORT DESCRIBING IN DETAIL THE BASIC PRINCIPLES AND METHODOLOGY TO BE FOLLOWED FOR THE MANAGEMENT OF NPLs...”

In addition to the above, it should be noted that among the documents that should accompany the relevant application for the license the law requires the submission of a comprehensive report describing in detail the basic principles and methodology to be followed for the management of NPLs; special reference should be made to special types or “vulnerable” borrowers, in accordance with the Banking Code of Conduct and Law 3869/2010 on over-indebted individuals.

Revocation/Suspension of license by the BoG

A license may be **revoked** by the BoG in the following cases:

- i. The NPL AMC has submitted or published false or misleading data in order to obtain the license or for any other reason;
- ii. The conditions set by the law for the lawful operation of the NPL AMC are no longer fulfilled;
- iii. The NPL AMC has breached the law or any relevant act issued under it or/and continues to commit such breaches;
- iv. The NPL AMC is used as a means for the legalisation of criminal proceeds or finances criminal activities.

The BoG may elect to suspend a license of the NPL AMC setting out a reasonable time for the latter to comply, provided that: (i) the breaches committed are not of such severity to warrant revocation, and (ii) the BoG has ascertained breaches of the NPL Law or any other Act issued by the BoG or the terms of the agreement for the transfer or management of the NPLs. The suspension period is extended and new recommendations are made to the NPL AMC if the latter fails to fully comply with the BoG's initial recommendations; the BoG may alternatively decide to revoke the

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license in this case. The BoG revokes the suspension decision if it finds that the NPL AMC has complied with the BoG’s initial recommendations.

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

Conclusion

The effects that the NPL Law, as well as the BoG Acts and the ministerial decisions that will be issued pursuant to it, will have on the liquidity of the credit institutions, the distressed assets and the economic recovery of the country in general remain to be seen; however, tackling the increasingly problematic issue of non-performing loans in Greece is a very challenging objective. Any efforts to incentivise banks, borrowers and external investors to reach constructive resolutions to the non-performing loans weighing down the Greek financial sector can only represent a step forward.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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