

The Legal / Regulatory Framework for Non-Performing Loans in Greece

Under the ever-increasing pressure of the continuously growing number of Non-Performing Loans ("NPL's") held by the Greek Banks as a result of the ongoing economic crisis in Greece, the Greek Parliament has enacted specific legislation introduced by the Greek Government, aiming at the establishment of a legal and regulatory framework for the transfer of NPL's from the banks, which currently hold them, to third parties, which will undertake the management and liquidation thereof.

This legislation is intended to create a secondary market for NPL's and also for performing loans in Greece and it is aimed at sanitising the balance sheets and portfolios of Greek banks whilst helping at the same time the borrowers of such NPL's to restructure their obligations under the NPL's in a more efficient and/or favourable for them manner.

The aforesaid legal and regulatory framework governing the transfers, management and liquidation of NPL's in Greece has been established by the provisions of Law 4354/2015, as amended by Law 4389/2016 and Law 4393/2016 (the «NPL Law»). The main provisions of the NPL Law are summarized below.

Scope of application of the NPL Law

The NPL Law, as amended and in force, applies to the transfer and the management of debt receivables from loans and credits that have been granted by any credit or financial institutions in Greece, excluding only any loans granted by the Deposit and Loan Fund, whether the borrower of such loans or credits is in default, in which case the loans/credits are defined as "non-performing loans" ("NPLs") or not.

It is noted that until 31 December 2017, loans or credits secured by a mortgage on the debtor's primary residence, provided that the value of such residence, as determined in accordance with the guidelines of the Ministry of Finance, does not exceed the sum of a hundred and forty thousand Euros (140.000 €), are excluded from any sale/transfer, but not from the assignment of the management thereof.

Management and Sale of Loans and Credits under NPL Law

The NPL Law, as amended and in force, distinguishes:

(a) the management of claims arising from loans and credits granted by Greek banks from (b) the sale and transfer thereof. In view of the above, NPL Law provides for and regulates the establishment of two different types of legal entities, and more specifically: (a) the Loan Management Companies, having as their objective the management of performing and non-performing loans and credit and (b) the Loan Acquiring Companies having as their objective the acquisition of performing and non-performing loans and credits.

a) Management of Loans and Credits under the NPL Law

- Loan Management Companies ("L.M.C.s")

The management of claims arising from loans and credits that have been granted by any credit or financial institutions in Greece falling within the scope of NPL Law, as amended and in force, may be assigned only to special purpose entities, ("L.M.C.'s" or Credit Servicing Firms and in Greek: "Εταιρείες Διαχείρισης Απαιτήσεων από Δάνεια και Πιστώσεις") having as their exclusive business objective the management of such loans. Under the NPL Law, L.M.C.s should be either: (a) Greek companies organized and existing in the form of a "société anonyme" (joint-stock corporations) or (b) companies, domiciled in any other European Economic Area ("EEA") Member State, which are legally established and operate in Greece through a branch office.

In order for L.M.C.s to lawfully carry out their activities, they need to be granted a special operating license from the Bank of Greece ("BoG")¹, which also acts as the supervising authority setting out any licensing and supervisory requirements, in relation to their establishment and operation.

L.M.C.s are required to have registered shares and to maintain a minimum share capital amounting to one hundred thousand Euros (100,000€), that must be paid in cash. They should be also listed in the General Commercial Registry (in Greek "GEMI") and their license should be published in the Official Governmental Gazette.

Under the NPL Law, L.M.C.s may also grant new loans and credits to the debtors whose debts they are managing, however only for refinancing or corporate restructuring purposes. In this case, the relevant L.M.C. should have a minimum share capital amounting to four million five hundred thousand Euros (4,500,000€) and also comply with the applicable BoG's regulations.

- **Loan Management Agreement**

The assignment of the management of claims arising from any loans or credits granted by any credit or financial institutions in Greece, whether the borrower is in default or not, requires the execution of a written Management Agreement between the L.M.C and the creditor of the relevant claims (i.e., the credit or financial institution). Under the NPL Law, such Management Agreement is required to include the following minimum information:

- i. Description of the claims whose management is assigned under the management Agreement and, as regards the NPL's, the status thereof (i.e., the amount due, any legal actions which might have been initiated against the debtor by the creditor bank, etc.).
- ii. The management fee. The amount of such fee shall in no case be passed on to the debtor.
- iii. A description of the management actions to be carried out by the L.M.C with respect to the debts, whose management is transferred to the L.M.C (including the legal monitoring, accounting and collection of these debts, as well as the negotiations with the debtors of the claims, whose management is transferred to the L.M.C, and the execution of settlement agreements for the settlement of the aforementioned debts).

A copy of the executed Management Agreement is required to be submitted to the BoG within 10 days from the date of the execution thereof. The BoG shall further review the submitted agreement in order to ensure that it complies with the provisions of the NPL Law.

b) Sale of Loans and Credits

- **Loan Acquiring Companies (L.A.C.s)**

Claims arising from loans or credits which have been granted by any credit or financial institution in Greece may be sold and transferred to acquiring entities ("L.A.C.s" or Credit Acquiring Firms and in Greek: "Εταιρείες Απόκτησης Απαιτήσεων από Δάνεια και Πιστώσεις") which, according to their articles of association (statutes), should have among their business objective, the acquisition of claims from loans and credits. Under the NPL Law, the L.A.C.s should be either (a) Greek companies organized and existing in the form of a "société anonyme" (joint-stock corporations) or (b) companies domiciled in any other EEA Member-State or c) companies having their registered seat in any third country – excluding those domiciled in states with "favourable tax regime" or in non-cooperating countries – which, upon their discretion, may operate in Greece through the establishment of a branch. L.A.C.s are permitted to acquire loans or credits provided that they have entered into a management agreement with an L.M.C., duly operating according to the provisions of the NPL Law, as amended and in force. The L.A.C.s are not required to obtain any operating license and are not subject to any supervision by the B.O.G.

- **Sale and Transfer Agreements under the NPL Law**

The sale and transfer of claims from loans and credits requires the execution of a written Sales and Transfer Agreement between the transferee L.A.C. and the creditor of the relevant claims (i.e., the transferor credit or financial institution), provided that the L.A.C. has already in place a management agreement with an L.M.C, as per above.

Specifically as regards claims arising from NPLs (as opposed to claims arising under loans whose debtor is not in default), the validity of the sale and transfer thereof is subject to the condition precedent of the prior written serving of a notice to the debtor, and, if applicable, to the guarantor thereof, to settle their debt at least twelve (12) months prior to the sale. By way of exception the serving of such notice is not required for any claims which are contested before the appropriate courts or any claims which have been adjudicated, as well as for the transfer of claims against debtors, who are deemed to be uncooperative debtors².

In addition to the above the Sale and Transfer Agreements which are governed by the NPL Law are subject to certain further publication formalities as these are laid down in the Greek law (including the registration thereof with the appropriate Land Registry and the notification of such registration to the debtor and the guarantor upon completion of the said registration).

² The term non-cooperative debtor is not defined explicitly in the NPL Law. However, reference is made to the definition of the "cooperative borrower" which was adopted by the Governing Council for the Management of Private Debt and which shall be used for the purposes of defining the term "non-cooperative debtor" under the NPL Law. As "cooperative borrower" is defined the person who a) provides to his/her creditors full and updated contact information (i.e. fixed – and cell phone number, e-mail, home and working address) and indicates a representative (in Greek "αντίκλητος") to be contacted in case of his/her unavailability; b) is available for contact upon his/her creditors request and he/she responds, in a clear and honest manner, and in any case within 15 days to any creditor's request; c) provides to his/her creditors any information pertaining to his/her current financial situation, within 15 days from any change thereof or from the date that such information was requested by the creditors; d) provides to his/her creditors any information which are likely to affect his/her future financial situation within 15 days from acquiring knowledge thereof and e) consents to the determination of an alternative restructuring proposal.

Disclaimer: The information set forth in this newsletter is intended to be a general update on certain issues relating to the subject-matter hereof. It is not intended to be legal advice and, therefore, it should not be relied upon, nor used as a basis for any decision-making. This information summarizes the aforementioned issues as of 28 November 2016 and does not reflect any changes or any developments that may have occurred thereafter.



For further details please contact:



Dimitris Diakopoulos
Senior Partner

ddiakopoulos@fdmalaw.com



Katerina Sideromenou
Associate

ksideromenou@fdmalaw.com

¹ By means of the Executive Act of BoG under no. 95/27.5.2016, the licensing process for L.M.C.s was determined.