BANKING & FINANCE newsletter
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Greek (N)PLs law: Lean is better

The Greek legal framework (Greek law 4354/2015, law 4354) for the licensing and operation of banking receivables' servicing platforms has been in place since December 2015; law 4354 was revised in May 2016 and again in June 2016 (please see our older newsletters on this matter[1]). Amendments to the law are afresh underway. A draft law (the draft law) which (among many others) sets out the amendments to law 4354 was submitted to the Greek parliament on 13 May 2017 and voting is expected by 18 May 2017. This newsletter discusses briefly the proposed amendments and what further would need to be done (if anything) to get to an efficient and practical legal framework.

Is re-writing really necessary?

Almost a year after its latest amendment, the key objective of law 4354, i.e. the creation of a liquid secondary NPL market, is far from achieved: only four[2] servicing licenses have been granted so far, out of which three to entities wholly owned or joint ventured with Greek systemic banks. None of them is yet in full operation.

Reportedly, another ten licenses (all filed well before 2017) are queuing up. This disappointing outcome is mainly due to the disproportionate regulatory requirements applicable to servicers, and the cumbersome licensing process; therefore, despite the two prior attempts at making the rules clear, practical and user friendly, law 4354 and related secondary legislation still lack those features.

Catch 22

Pursuant to a draft Preliminary Agreement on the Supplemental Memorandum of Understanding (**MoU**) for Greece dated 2 May 2017, more amendments to the servicing framework are necessary *"to enhance the functioning of the NPLs' secondary market"*. The draft MoU, similarly to the Supplemental MoU of June 2016[3] ranks the changes to law 4354 as prior actions. Below we list the amendments agreed under the MoU against how these are transposed in the draft law:

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[1] http://zeya.com/articles/greek-npls-law-first-step-towards-secondary-market, http://zeya.com/articles/greek-npls-law-implementation-unfolds and http://zeya.com/articles/greek-npls-law-extreme-makeover on Greek law 4354/2015 passed on 16 December 2015 (the NPL law), the Bank of Greece's decision No 82/2016 (the ExCo Decision) and on the amendments introduced to the Greek law 4354/2015 on May and June 2016, respectively.

[2] Namely Cepal Hellas, FPS Eurobank, Thea Artemis and Pillarstone Greece.

[3] http://ec.europa.eu/info/sites/info/files/ecfin_smou_en.pdf.

REOs management – Currently servicers are not entitled to manage REOs. This restriction is impractical and without legal, commercial or other benefit; on the contrary, it makes the servicing structure more complicated and expensive. To that end the MoU requires that servicers are allowed to manage REOs to the extent they are *"connected to the loan portfolio"*.

The draft law provides that a servicer is entitled to manage REOs that (1) constituted security for a loan managed by that servicer; and (2) were acquired by the beneficiary of the loan. The proposed amendment (i) leaves out properties that are not part of the security package of the loan (e.g. a borrower offers his (free of mortgage) holiday home to the bank towards repayment of a loan secured by his primary residence); and (ii) is unclear on how it will treat the acquisition of properties by entities other than the direct beneficiary of the loan (as would be the case in e.g. a securitisation transaction where the securitisation SPV is not entitled to purchase real estate property and, therefore, a master SPV structure is applied).

Ministry of Finance opinion – The prior opinion of a committee of the Ministry of Finance, as a pre-requisite for the issuance of the license, is abolished. The draft law deletes all references to the Ministry of Finance committee from law 4354.

Processes and documentation simplification – According to the MoU a wide spectrum of policies, documentation, corporate governance and other requirements that the Bank of Greece (**BoG**) assesses and reviews under the current framework, should be simplified or abolished, namely:

(1) reduction of the restructuring strategy requirements; the draft law is silent on this point; in consequence, the servicer will still have to submit to the BoG a detailed report on the loan restructuring principles and methods in the context of the licensing application file;

(2) abolition of the IT security assessment provided appropriate ISO certification is in place;

(3) the contact point requirement may be satisfied also by virtual contact points (such as websites or call-centres);

(4) simplification of the fit & proper test;

(5) abolition of all corporate governance, outsourcing and similar formalities set under BoG Act 2577/2006 to the extent that the applicant servicers will not provide financing.

The current rules on points nos (2) to (5) are in Act no 95/27.5.2016[4] of the Executive Committee of BoG; in this respect the draft law is silent on points (2) to (5) of the MoU; we expect that a new BoG Act that will amend the existing one will be issued shortly after the passing of the draft law;

(6) abolition of AML assessment / requirements for loans held by an AML-compliant supervised entity; according to the explanatory report to the draft law, this is indeed what the proposed amendments aim at; however the language of the draft law is ambiguous and could be interpreted as continuing to impose AML

[4] http://www.bankofgreece.gr/BogDocumentPEE/Executive%20Committee_95_27_5_2016.pdf.

requirements to those servicers that collect moneys on behalf of their clients, irrespective of whether such clients are subject to AML obligations or not;

(7) simplification of the business plan requirements to the extent that the applicant servicers will not provide financing; the draft law re-iterates what is already in the current version of law 4354, i.e. that the business plan must include the applicant servicer's functions, targets, action plan, strategy and available resources; the proposed provision may be interpreted as silently restricting BoG's authority to review (in addition to the above) the viability of the business plans, as has been the case to-date. It is questionable why an entity that does not expect to have financial exposure to the public (i.e. does not accept deposits / grant loans) should have its business plan reviewed by the regulator in the first place; however, the elimination of the viability review (if this is indeed the draft law's objective) is a sustainable compromise;

and last, but not least

(8) the purchaser of loans will be entitled to rely on the Code of Conduct[5] actions taken by the originator prior to the sale of the loan; under the current language of law 4354 each purchaser must re-open the negotiation process under the Code of Conduct irrespective of whether the originator of the loan had already kicked-off the process; Therefore, this amendment is welcomed, not because it facilitates the licensing process, but because it avoids delays due to the unnecessary repetition of the Code of Conduct processes.

In addition to the items not [fully] addressed by the draft law discussed above, a critical controversy will also remain unsolved; namely, the solo applicability of the Greek securitisation law[6] technology for the sale of NPLs. The debate was generated from an HFSF report of 2016 on NPL impediments[7] where it was argued that after the passing of law 4354, it was no longer possible to apply the Greek securitisation law for NPLs portfolios. The HFSF's conclusion is unpersuasive – the Zeya Banking & Finance group have set out our views when asked by clients. However, irrespective of its validity the fact is that this issue was flagged as an impediment for the development of the Greek NPL market in the HFSF report; this alone may be perceived as a contingent legal risk by some investors; the debate could be resolved by the BoG or by Greek courts, but, in the latter case, only after a transaction has closed and provided a claim was raised; if the courts were to find that the Greek securitisation law is not applicable, the implications would be multiple: tax exemptions and bankruptcy ring-fencing are two of the most important features of the securitisation law that would go away. Therefore, the legal risk can be settled conclusively only through clear guidance by the BoG; else by (yet another) amendment of law 4354.

[5] Established by decision no 116/25.8.2014, issued by the Credit and Insurance Committee of the BoG, as amended by decision no 195/29.7.2016 of the Credit and Insurance Committee of the BoG. http://www.bankofgreece.gr/BoGDocuments/%CE%95%CE%A0%CE%91%CE%98%20195_1.pdf.

[6] Greek law 3156/2003, article 10 and article 14.

[7] HFSF report entitled "Updated Analysis of Non -Regulatory Constraints & Impediments for the development of an NPL market in Greece" of September 2016. http://www.hfsf.gr/files/updated_analysis_20160901_en.pdf.

Time's up

Undoubtedly, the adjustments to the legal framework echo the recommendations of market players. So far the Greek legislator, often in a misconstrued effort to offer additional protection to defaulting obligors, has failed to draft rules that accommodate market requests. However, there is little room for further time-consuming adjustments to the law, given that the banks must meet their NPE targets[8] in a credible way; and, more importantly, that transactions and other practical, long-term and efficient solutions must be implemented sooner rather than later, in order to address the NPLs accumulated by the Greek banks.

The key is flexibility by the regulators, pragmatism by Greek banks and investors alike, and a workable legal framework. One would expect that the design of a clear legal framework would be relatively straightforward (there are plenty of precedents in other European jurisdictions); regrettably, it has not been the case so far. Time will tell if we got it right this time round.

[8] "Report on Operational Targets for Non Performing Exposures" dated 30 November 2016, issued by the Bank of Greece. http://www.bankofgreece.gr/BoGAttachments/Report_Operational_Targets_for_NPEs_EN.pdf.

For further information, please contact:

Christina Papanikolopoulou
Partner
Head of the Banking & Finance and Capital Markets group
T (+30) 210 69 67 101
M (+30) 6970 444 003
E c.papanikolopoulou@zeya.com

Kely Pesketzi
Senior associate
Banking & Finance and Capital Markets group
T (+30) 210 69 67 131
M (+30) 6958 462 623
E k.pesketzi@zeya.com

Athina Palli
Associate
Banking & Finance and Capital Markets group
T (+30) 210 69 67 119
M (+30) 6957 773 145
E a.palli@zeya.com

Established in 1893, Zepos & Yannopoulos is one of the leading and largest Law firms in Greece providing comprehensive legal and tax services to companies conducting business in Greece.

280, Kifissias Ave.
152 32 Halandri
Athens, Greece

newsletters@zeya.com
Tel.: (+30) 210 69 67 000
Fax: (+30) 210 69 94 640
www.zeya.com