



# Financial Regulation

BRIEFING

April 2016

## Non-Performing Loans (NPLs): Management and transfer of NPL portfolios in Greece\*

Law 4354/2015 has set the starting point for the implementation of the policy for the external management and transfer of Non-Performing Loans (NPLs) in Greece. The legislator aims at supporting the Greek banks in relation to their NPL portfolios by facilitating their cooperation with expert NPL-management companies. Those companies should have the know-how, experience and expertise to effectively manage NPLs and achieve significant recovery rates on behalf of the banks. Further, the legislator clearly indicates the orientation towards a secondary market for NPLs. Even though transfers of NPL portfolios have not yet been triggered, the

framework is in place and its application is expected sooner or later.

Since the entry into force of Law 4354/2015, the relevant regulatory and supervisory regime has been evolving, calling for a consistent application and interpretation. The current regime is expected to further develop in the near future, thus, interested parties should always seek expert legal advice in this regard.

\*The present briefing has taken into account the legal and regulatory framework in force up until April 20th

**Rokas**

International Law Firm





The levels of NPLs in Greece have increased significantly, due to the long-standing crisis, thus negatively affecting the credit supply channel and are causing a worsening of the banking sector financial soundness indicators. Following the latest recapitalization of Greek banks, "cleaning" the banking sector balance sheet became an imperative for new lending activity at lower interest rates and for supporting economy to achieve sustainable growth rates. The initially implemented strategy of internal management of NPLs by banks themselves, creating special internal units and internal "bad-banks", reached its limits. Therefore, a new strategy for NPLs has now been employed by the legislator and the regulator: external management and transfer of NPL portfolios to special purpose entities. This new strategy is supposed to resolve the NPLs problem in a sustainable manner, to ensure that the banking sector is fully capable to revitalize lending activity to economically viable companies. Besides, the formation and implementation of a national NPL resolution strategy is a pillar of the Third Memorandum.

Following subsequent extensions, by virtue of the recent amendment, the 15th of May 2016 is supposed to be the date of the liberalization of the sale of non-performing loans (NPLs). Up until now, servicing by licensed non-bank servicers is permitted for all categories of NPLs, whereas only large corporate NPLs and non-primary residence mortgages can be sold to licensed entities, the other types of loans and credit being exempted, by a special legal provision, until May 15th. However, by now, a long regulatory "way" has been paved. More specifically, the Bank of Greece (BoG) has issued so far:

The Executive Committee Act (ECA) 42/2014 on the supervisory framework for non-performing exposures (NPEs), thus introducing a harmonized framework and accelerating efforts of banks regarding efficient NPE management. The framework includes provisions on governance structure, portfolio segmentation, forbearance measures, borrower assessment, loan modification effectiveness, monitoring and reporting.

- The ECA 47/2015, establishing a comprehensive prudential reporting framework for NPEs in Greece, going beyond the requirements set by EBA, as regards: portfolio segmentation, collateral analysis, legal workout activities, flows of NPEs, business loans by sector, performance of forbearance and closure solutions.
- The Code of Conduct on NPL management by virtue of Decision 116/25.8.2014 issued by the BoG Credit and Insurance Committee, as in force, in the context of Law 4224/2013.
- The ECA 54/2015 on the methodology for determining the maximum repayment capacity of borrowers and the forced sale value of a residential property in the context of the liquidation test envisaged by Law 4336/2015 regarding the protection of primary residence.

Following those Acts, Law 4354/2015 marked the turn in the policy for NPLs. Law 4354/2015 provides the framework for non-bank servicers and the sale of NPLs. The BoG has issued ECA 82/2016 regarding the licensing and regulatory regime on non-bank servicers and companies acquiring NPLs, a level-2 regulatory act delegated by Law 4354/2015. These companies will be supervised by the BoG and abide by the Code of Conduct on NPL management (already mentioned above).

It is worth-mentioning that the Code of Conduct issued by the BoG, already enumerated the sale of the loan as a type of "Resolution and closure solution" ("outright sale/disposal/discounted pay-off", Section III, Annex 2 of the Code of Conduct). This was actually an "agreement for final settlement" defined as the agreement between an institution and a borrower for the final settlement of his debt upon terms which may result in the transfer of ownership of guarantees or other assets of the borrower following the latter's consent. From the Code of Conduct we have now moved on to the new framework, established by Law 4354/2015, under which the transfer of NPL receivables is concluded without the borrower's consent. A notification of the transfer is, however, necessary.





## Agreement on the sale and transfer of NPL receivables

### *Seller:*

- Credit institution authorized by the BoG.
- Branch in Greece of a credit institution having its registered seat outside Greece.
- Special purpose vehicles as defined in art.10 of the "securitization" law 3156/2003, i.e. SPVs employed for the securitization of receivables.
- NPL - acquiring companies operating under the framework set by Law 4354/2015.

### *Acquirer:*

- Credit institutions:
  - ▢ Even though the concept of the Law is to discharge the credit institutions of NPLs, nevertheless the credit institutions are explicitly included in the scope of possible NPL acquirers.
- Other financial institutions.
- NPL- acquiring companies.

The ECA 82/2016 issued by the BoG considers the acquirer of NPL-portfolio to be a manager of NPLs as well.

### *The underlying asset of the contract:*

- NPL receivables (which will, after May 15<sup>th</sup>, include all categories of loans and credit currently exempted):
  - ▢ in arrears for more than 90 days,
  - ▢ following an extrajudicial notification addressed to the borrower,
  - ▢ no other qualitative characteristics are provided by the Law (for example, that the borrower should not have entered into resolution/bankruptcy proceedings). Thus, qualitative criteria should be included in the sale and transfer agreement, while relevant warranties and guaranties by the bank should be included in the transfer agreement to alleviate the information asymmetry between the bank and the purchaser, inherent in the NPL market as well.

- Single NPLs or portfolio of NPLs:
  - ▢ Performing NPLs can also be transferred to NPL- acquiring companies as long as the borrower of the performing and non-performing loan is the same person.
  - ▢ Ancillary rights such as in rem securities and guarantees.
- Contract Formalities:
  - ▢ Concluded in writing.
  - ▢ Registration of the contract, as well as of the ancillary rights, with the competent public register i.e. at the place of residence or seat of the borrower otherwise registration with the register of Athens. The registration triggers the following legal consequences:
    - marks the transfer of NPL receivables,
    - rights against third parties, linked to the transfer of NPLs are acquired.

## Agreement on the outsourcing of NPLs management

### *Manager:*

- NPL management companies in the form of société anonymes having their registered seat or branch in Greece.

### *Assets under management:*

- NPL receivables (all categories of loans and credit included therein, without exemptions):
  - ▢ in arrears for more than 90 days.
- Single NPLs or portfolio of NPLs:
  - ▢ Performing NPLs can also be outsourced to NPL management companies as long as the borrower of the performing and non-performing loan is the same person.

### *Contract Formalities:*

- Concluded in writing.
- Minimum Content:
  - ▢ description of the claims and its stage of non-performance,
  - ▢ content of the management: monitoring (legal and accounting), collection, negotiations with debtors, conclusion of settlement agreements or debt restructuring etc.
  - ▢ management fee.



- Prior review by the BoG is required by the law, though a Decision by the BoG specifying the details of the process is still pending.

#### *Other Competences of the NPL- manager companies*

- Initiate enforcement actions.
- Participate in insolvency proceedings in relation to the NPLs under management.

#### **Significant Disclosure and Reporting Requirements**

Both NPL-acquiring companies and NPL-manager companies are subject to significant disclosure requirements in order to be granted authorization by the BoG, as well as important reporting requirements during their operations. More specifically, sufficient evidence should be submitted to the BoG in relation to the identity of the participants- either directly or indirectly- in the company, its significant shareholders (>10%) the BoD members and managers, the structure and business plan of the company etc. The requirements set by the Law 4354/2015 have been further detailed by the ECA 82/2016, which also sets detailed reporting requirements regarding financial statements, reports on internal control, IT system, risk management, compliance, NPL management procedures etc.

The BoG may suspend or even revoke the authorization granted to the said companies in case of, inter alia, a violation of Law 4354/2015 and its delegated acts or breach of the contract for the management and/or transfer of NPLs (a proportionality test being applied), as well as in case of false or misleading information submitted to the authorities.

#### **Refinancing Activities**

The NPL- acquiring and management companies may be authorized by the BoG to grant loans and other forms of credit to those debtors whose loans they have acquired and been managing, for the sole purpose of refinancing. NPL-managers need the prior consent of the originator of debt.

#### **Price Considerations in NPL agreements entered into by Greek credit institutions**

Interestingly, the law and secondary legislation do not include provisions on the pricing of loan portfolios to be transferred to and managed by NPL-acquiring and management companies. Thus, the price will be negotiated between the parties to the transaction given the particularities of each NPL portfolio (e.g. quality of guarantees, recovery prospects of the debtor etc), the reputation of the NPL company (e.g. rate of successful recoveries for NPL-managers, experience and presence in the market etc), the business relations possibly formed between the parties negotiating the transaction etc.

However, it should be born in mind that the Greek banks have recently been recapitalized using significant amounts of public resources and that the NPL portfolios constitute an asset which is not considered negligible. So far, the banks have established specialized units for the management and recovery of NPLs, have invested in time and human resources and have developed encouraging prospects of recoveries in certain cases. Thus, the price to be set by the parties in an NPL agreement should exceed the recovery rates achieved and foreseen by the banks' NPL units. Otherwise, the bank officers negotiating the transaction and the decision-makers may risk to be held liable for acting against the bank's best interests and thus harming its financial position. An auditor's report could be a plausible solution to mitigate such risk.



## For further information please contact:

Dr. Christina Tarnanidou  
Partner, Athens  
E [c.tarnanidou@rokas.com](mailto:c.tarnanidou@rokas.com)

Athina Siafarika  
Associate, Athens  
E [a.siafarika@rokas.com](mailto:a.siafarika@rokas.com)

*Rokas' Athens office is part of an international network of independent Law and Business Consulting Firms, spreading across the Central & SE European region. For more information on the jurisdictions of our network, on our areas of practice and our activities, please visit our website ...*

[www.rokas.com](http://www.rokas.com)

A publication by *Rokas*...

intended for the information of our clients and contacts, aiming to highlight selected recent legal and regulatory developments in the SEE countries and the EU. The highlights do not cover every issue; they include limited information on the selected topic without extending to legal or other advice. Readers should not act upon them without taking relevant professional advice.

© 2016, *Rokas*. All rights reserved.