



# Banking Regulation

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# Greece

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## Introduction

The international financial crisis has triggered major developments in the European banking sector both in terms of formation and regulation. Subsequently, amidst the fiscal crisis in the euro area that became manifest in 2010, the creation of a European Banking Union became the most significant objective of the EU political agenda. This objective led to the introduction of comprehensive EU legislation for the establishment of a Single Supervisory Mechanism, a Single Resolution Mechanism for unviable banks and a single deposit guarantee scheme. The new state of things is epitomised in the enhancement of the single rulebook for the macro- and micro-prudential banking supervision that implements the Basel III capital requirements, with the European Banking Authority (“EBA”) acting as the rulebook’s custodian and key developer. This intensive legislative activity has resulted in much greater uniformity, verging on full harmonisation, of the regulatory norms.

In turn, Greek banking law and supervision has been modified in order to keep up and comply with the rigorous EU initiatives. Although historically conservative and well-capitalised, Greek banks<sup>1</sup> have undergone particular challenging conditions: the successive credit rating downgrades of the Hellenic Republic; the restructuring of the public debt through participation of the private sector (“PSI”); the uncertainty regarding Greece’s continued participation in the eurozone; the rise of non-performing loans (“NPLs”) and deterioration of the loan portfolio quality; and unavailability of interbanking or capital markets funding.

Under the pressure of the above factors and in order to safeguard the financial stability of the Greek banking sector and customer deposits, the Greek Government and the central Bank of Greece (“BoG”) had to adopt a series of extraordinary measures including: recourse to the emergency liquidity assistance mechanism (“ELA”); and forcing all Greek banks to increase their capital base to a conservatively (after the stress tests) estimated adequate level and thus either recapitalise or rehabilitate. In this context, the European Commission (“Commission”), the European Central Bank (“ECB”) and the International Monetary Fund (“IMF”) have offered guidance and assistance ensuring the consistency of the implementation of the reforms in the financial sector with the purposes of the First, Second and Third Economic Adjustment Programme.

Under the provisions of the Greek Recapitalisation Law (law 3864/2010), the Hellenic Financial Stability Fund (“HFSF”) was established in order to facilitate and supervise the recapitalisation and consolidation of the banking sector and manage the holding of banking shares. The first banking recapitalisation took place in 2013, after the Greek government’s debt restructuring. The HFSF contributed €25.5bn and ended up holding 81% to 95% of the total capital of all four systemic banks, while the private sector contributed €3.1bn. The

second recapitalisation took place in the period April to May 2014, raising €8.3bn from the private sector only and resulting in the HFSF's dilution.

In August 2015, the Greek Government and the institutional lenders of Greece reached a new financing framework arrangement that was approved by the Parliament. The Third Economic Adjustment Programme provided for a series of further reformative measures and actions for the restoration of financial stability, and was accompanied by new stability fiscal support of €86bn. The conditions of such required an immediate recapitalisation of the Greek systemic banks, the immediate transposition of the Bank Recovery and Resolution Directive (EU) 2014/59 (the "BRRD"), and the Single Supervisory Mechanism ("SSM") was mandated to conduct a new Comprehensive Assessment, which involved an asset quality and capital adequacy review that would determine the exact amount needed for recapitalising each of Greece's systemic banks.

The recapitalisation exercise was completed within 2015 and required legislative measures amending the Greek Recapitalisation Law to render it compatible with the new BRRD regime and strengthen the governance of both the HFSF and the Greek banks. The recapitalisation was implemented through a series of capital-enhancing actions, consisting of certain mitigating (restructuring) measures, liability management exercises and equity issues with offering of common shares and contingent convertible securities ("CoCos") to the HFSF. Two banks managed to raise the required capital exclusively from the private sector, with two systemic banks having the HFSF cover the capital shortfall under the BRRD precautionary recapitalisation conditions and subscribing for ordinary shares and CoCos.

Following the positive assessment by the ECB and approval by the European Stability Mechanism ("ESM") of the Third Economic Adjustment Programme's implementation and the supplemental MoU signed by the Hellenic Republic and the Commission, updating the policy conditions and reflecting the progress achieved, the ESM and the European Financial Stability Facility ("EFSF") have decided on the adoption of a set of short-term debt relief measures for Greece within 2017. The measures are designed to reduce interest rate risk for the Hellenic Republic, including a bond exchange, where floating rate notes disbursed by the ESM and the EFSF to the Hellenic Republic for bank recapitalisation will be gradually exchanged for fixed coupon notes with a longer maturity. The relevant bond exchange agreements are already concluded with the Greek banks providing their consent for the scheme's implementation, which is expected to be effectively neutral for them.

Currently, the management of NPLs presents the most significant challenge for the Greek banks and economy, as their stock has reached unprecedented levels, with the deterioration in asset quality being widespread. Recently, the BoG, in close cooperation with the ECB, designed an NPL operational targets framework. Greek banks agreed on ambitious but achievable targets, which were submitted at the end of September 2016, with a three-year timeline, aiming at reducing their NPLs by 49% by the end of 2019.

### **Recent regulatory themes and key regulatory developments**

Considerable institutional and regulatory developments have taken place in the Greek banking sector due to the EU legislative measures establishing the European Banking Union ("EBU"). Such rules, among other things, lay down capital requirements for banks, regulate the prevention and management of bank failures and ensure better protection for depositors.

The two legal acts of the EU single rulebook that since 2014 have constituted the basic rules on prudential supervision of banking institutions in Greece are: Regulation (EU) 575/2013

on the prudential requirements of the financial institutions (“CRR”), directly applicable in the Greek legal system; and Directive (EU) 2013/36 (“CRD”) on access to the activity and prudential supervision of financial institutions, the latter being transposed in Greece by Greek law 4261/2014 (the “Banking Law”); these legislative acts are accompanied by the Commission’s implementing acts and EBA Guidelines that put in place a comprehensive and risk-sensitive framework and foster enhanced risk management.

The SSM became operative on 4 November 2014, placing the ECB as the central prudential supervisor of financial institutions in the euro area and in those non-euro EU countries that choose to join the SSM. Henceforth, under the SSM Regulation (EU) 1024/2013 and the SSM Framework Regulation (EU) 468/2014, the ECB has direct supervisory competence in relation to the prudential and governance requirements over the four biggest banks of Greece that are considered systemically important for the EU financial stability. This development resulted in the total reformation of the supervisory banking system in Greece, since the ECB through its Supervisory Board and Governing Council is exclusively competent for the supervision of the most substantial part of the Greek banking sector. The BoG retained its exclusive supervisory powers only on the few remaining smaller Greek banks that represent a market share of less than 10%.

Greek law 4335/2015, transposing in July 2015 the BRRD (the “BRRD Law”), has regulated the recovery and resolution of the Greek banking institutions, working in parallel with Regulation (EU) 806/2014 on the Single Resolution Mechanism (the “SRM Regulation”) since January 2016. Within the SRM, the BRRD and the SRM Regulation are complementary; both the BRRD and the SRM Regulation enshrine in binding rules the bail-in and the “no creditor worse off” principles and introduce both “crisis prevention” and “crisis management” measures. The BRRD provides uniform rules across the EU single market and the SRM Regulation sets out the institutional and funding architecture for applying those rules in the euro area, establishing a Single Resolution Board (“SRB”) and a Single Resolution Fund (“SRF”).

Under the BRRD Law, the BoG was appointed as the resolution authority at the national level, competent to perform resolution tools and mechanisms and exercise resolution powers. In parallel and in line with the SRM Regulation, the SRB, together with the European Council and, where relevant, the Commission, replaced BoG in respect of all aspects related to the resolution decision-making process regarding the credit institutions either supervised by ECB or to be funded by the SRF, whilst operationally, the SRB’s decisions shall be implemented in cooperation with the BoG.

The BRRD ensures that the exercise of special resolution and bail-in powers are construed as valid administrative acts and are given effect within all EU Member States. For cross-border scenarios outside the EU, where the BRRD does not apply, the BRRD and the BRRD Law address the risk that the effectiveness of the resolution powers may be challenged under the law of the contract (thus frustrating the resolution authority’s attempts to restore the banking institution to viability); with certain limited exceptions, each credit institution is required to include contractual terms in all contracts which create a relevant liability for it and are governed by the law of a non-EU country.

The SRF, established and regulated by the SRM Regulation and the Intergovernmental Agreement 8457/14 by 26 EU Member States, shall be used for ensuring the efficient application of the resolution tools and exercise of resolution powers over a credit institution, in accordance with the SRM resolution objectives and principles. The SRF will be fully financed by banks’ contributions and built up over eight years, beginning in 2016 and

reaching a target level of at least 1% of the covered deposits amount of all authorised banks in participating Member States.

Moreover, Greek law 4370/2016 transposed Directive (EU) 2014/49 on national Deposit Guarantee Schemes (“DGS”), ensuring faster and easier access to the guaranteed amounts. Depositors are protected from bank failures, benefiting from €100,000 guaranteed coverage in case of bank bankruptcy, backed by funds collected in advance from the banking sector.

With respect to the third EBU pillar, the Commission issued a legislative proposal for the establishment of a euro-area wide deposit insurance scheme (“EDIS”) in November 2015. The scheme, developing over time and in three stages, will consist of a reinsurance of national DGS, moving after three years to a co-insurance scheme, in which the contribution of EDIS will progressively increase over time, while a full deposit insurance scheme is envisaged in 2024.

In an effort to fulfil the Hellenic Republic’s commitments under the Third Economic Adjustment Programme for establishing an NPL market and strengthening the institutional framework for the NPL resolution, Greek law 4354/2015 (the “NPL Law”), as amended vastly in 2016, and the implementing BoG Executive Committee Act 95/27.05.2016 were adopted. This NPL framework governs the sale of both NPLs and performing loans, regulates the establishment, regulatory requirements, operation and supervision of NPL management companies, and specifies the requirements as well as the minimum content of the relevant management or transfer agreements.

Further, under the set of transparency provisions adopted in April 2016, credit institutions operating in Greece shall annually publish all payments towards media, advertising and communications companies (and their affiliates) and all kind of sponsorships and donations made within the financial year.

## **Regulatory architecture: overview of banking regulators and key regulations**

### Banking supervision

Under the SSM architecture, the ECB is exclusively competent to authorise and withdraw authorisations of credit institutions established in Greece and has assumed the prudential supervision of the four major Greek banks, i.e. Piraeus Bank, National Bank of Greece, Alpha Bank and Eurobank Ergasias. The ECB ensures the robust governance arrangements and internal control mechanisms of such banking institutions, assesses notifications on the acquisition or disposal of qualifying holdings, imposes prudential requirements in the areas of own funds, liquidity, leverage risk and remuneration policies and carries out supervisory reviews and stress tests. The ECB exercises its tasks in cooperation with the BoG.

The BoG, apart from the prudential supervision of the few remaining smaller Greek banks, remains competent for all banking institutions established in Greece in the fields of: (i) prevention of the use of the financial system for the purpose of money laundering and terrorist financing (“AML”); and (ii) consumer protection.

The Hellenic Capital Market Commission (“HCMC”) is competent for the supervision of the provision of investment services and activities by all Greek banks and their compliance with the MiFID provisions.

### Key banking regulations

The key legislation for Greek banks includes the CRR and the Banking Law.

With regard to the supervision of the Greek banks, along with the Banking Law and the Statute of the BoG, the following EU Regulations apply: the SSM Regulation conferring

specific tasks on the ECB concerning policies related to the prudential supervision of credit institutions; the SSM Framework Regulation establishing the framework for cooperation within the SSM between the ECB and the national competent authorities and with national designated authorities; and Regulation (EU) 1093/2010, as in force, establishing the EBA.

In parallel, the BRRD Law and the SRM Regulation complementarily apply to the Greek banks, regulating their recovery and resolution, as explained above in more detail.

All the above Greek laws and EU Regulations are accompanied by and implemented with the Commission's, ECB's and BoG's regulations and decisions and the relevant EBA guidelines.

Further important regulations are the emergency measures established by Greek law 3723/2008 introducing the Hellenic Bank Support Plan and the Greek Recapitalisation Law establishing and regulating the HFSF, the manner in which the HFSF may recapitalise banks as a measure of extraordinary public capital support under the BRRD Law and the SRM Regulation and imposing certain restrictions and governance rules on the recapitalised banks.

Due to the state support received by the Greek banks, further commitments arising from the respective support schemes and the Commission's state aid decisions have shaped a special legal and supervisory regime for the Greek banks – even more demanding and challenging – placing the Greek banks under multiple supervision (SSM, ECB, BoG, HFSF, Hellenic Government, Commission, Monitoring Trustees acting on behalf of the Commission and liaising with the ECB observers, etc.), repetitive regulatory reviews and stress tests.

In more detail, under the EU state aid rules and the respective Commission state aid approval decisions, the Hellenic Republic undertook certain commitments on the corporate governance and commercial operations of the recapitalised banks and the HFSF concluded with each of the Greek banks a Relationship Framework Agreement (“RFA”) governing the relationship between the HFSF and the banks, ensuring the development and implementation of the Restructuring Plans of each of the banks, their efficient management and governance and determining the material matters for which the HFSF's consent is required (together the “State Aid Commitments”). The restructuring plans and the State Aid Commitments were updated by the Commission in the context of the 2015 recapitalisation. As a result, the Greek regulatory system is further shaped due to the above emergency regime.

Greek banks are also subject to Greek law 4224/2013, providing for the recently issued “Code of Conduct” by the BoG and offering solutions to both banks and debtors to deal with NPLs, and the NPL Law regulating the transfer of NPLs and their management by special debt management companies established under the same law.

The current banking legal framework also includes Greek law 4370/2016 regulating the Hellenic Deposit and Investment Guarantee Fund (transposing Directive on DGS), Greek law 3691/2008 on the prevention and suppression of money laundering and terrorist financing (“AML Law” – transposing Directives (EU) 2005/60 and 2006/70) and Greek law 3862/2010 on payment services and participation in credit institutions (transposing Directive (EU) 2007/64).

The MiFID law 3606/2007 that transposed the EU legal framework for Markets in Financial Instruments (MiFID) and the respective implementing HCMC decisions and guidelines constitutes an important part of the Greek banking regulation in relation to the provision of investment services and activities from banking institutions. It should be noted that the MiFID II and the respective Regulation (MiFIR) that will replace the MiFID I framework

will come into force as of January 2018 (originally applicable from January 2017), in view of the recent amendment of MiFID II for the one-calendar-year postponement.

Greek banks are also subject to the harmonised EU rules on derivatives trading, i.e. Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (known as “EMIR”) and the relevant Commission’s Delegated Regulations. In this context, Greek banks using derivatives for trading, hedging or investment are subject to: (a) a reporting obligation of all derivatives to a registered trade repository (TR); (b) a clearing obligation of standard derivatives via a central counterparty (CCP); and (c) an obligation for the adoption of risk-mitigating techniques for OTC derivative contracts not cleared by a CCP.

Since the major Greek banks are in the form of a *Soci t  Anonyme*, the Greek codified law 2190/1920 on *Soci t s Anonymes* applies and supplements the Banking Law. In addition, Greek banks whose shares are listed on the Athens Exchange are also subject to the applicable capital markets regulations including: Market Abuse Regulation (EU) 596/2014 (MAR) and the Greek MAD law 4443/2016 regulating the criminal sanctions for market abuse; Prospectus law 3401/2005 as amended (transposing Directive (EC) 2001/34 as amended); Takeover Bid law 3461/2006 (transposing Directive (EC) 2004/25); and Transparency law 3556/2007 (transposing the transparency Directive (EC) 2004/109), along with their respective HCMC implementing decisions and guidelines.

#### Banking activities restrictions

According to the updated State Aid Commitments, certain restrictions are imposed on aided banks’ operations, including restrictions on the banks’ governance, management and decision-making and restrictions on: (i) the payment of dividends or coupons on shares or titles classified as own funds; (ii) the exercising of a call option that would result in a decrease of the banks’ regulatory (own) capital; (iii) repurchases of the banks’ bonds and treasury shares; (iv) acquisitions of other companies; and (v) using state aid for advertising purposes. The above restrictions may be lifted under certain conditions.

Under the CRR provisions, a credit institution may not have a qualifying holding, the amount of which exceeds 15% of its own funds in an undertaking outside the financial sector. The total amount of a credit institution’s qualifying holdings in such undertakings may not exceed 60% of its own funds.

Due to scarce liquidity and for purposes of protection of the Greek financial system, the Greek government adopted an urgent Legislative Act dated 18 July 2015 and certain secondary legislation, pursuant to which capital controls are currently in place (the “Capital Control Restrictions”). The scope of the Capital Control Restrictions is limited to Greek banks, payment and electronic money institutions, as well as their branches and representatives of such institutions operating in Greece. The general rule is that cash withdrawals of any type are subject to certain limits and capital or cash transfers abroad are generally prohibited. Further prohibitions, such as opening new current accounts are in force. However, certain categories of capital transfers and withdrawals are exempt from the above prohibitions and thus permitted. Moreover, certain prohibited transactions may be approved on an *ad hoc* basis by the Committee for the Approval of Bank Transactions. From July 2015 until today, the above Legislative Act has been amended by successive Ministerial Decisions gradually alleviating certain restrictions, and the long-term aspiration is that these capital controls restrictions are eventually abolished.

Furthermore, under Greek law 3869/2010 on the restructuring of debt of individuals, as in force, and Greek law 4307/2014 on the settlement of small businesses’ and professionals’ debts, a court judgment may be obtained, prohibiting temporarily any enforcement



procedures against debtors' assets. In more detail, until December 2018 an individual may file a petition under Greek law 3869/2010 to obtain a court decision prohibiting its creditors from initiating enforcement against its property that is used as its main residence, under certain income and property thresholds. In replacement of the relevant framework of Greek law 4307/2014 (applicable only for petitions submitted until 31.09.2016), an out-of-court procedure for the adjustment of business debts will be voted on by the Greek Parliament within the following months, while the platforms for electronic auctions and out-of-court mechanisms are expected to become operational soon.

Greek Consumer Protection law 2251/1994 prohibits the seizure of the debtor's primary and sole residence by credit institutions in order to satisfy claims from consumer loans and credit cards of less than €20,000, under certain conditions.

### **Bank governance and internal controls**

Chapter IV of the Banking Law requires the institutions to have robust governance arrangements, effective processes of risk monitoring and management, adequate internal control mechanisms, and remuneration policies and practices that are consistent with and promote sound and effective risk management. The corporate governance regime is also set out in the BoG Governor's Act 2577/2006. Pursuant to the revised HFSF Law, the HFSF recently completed the process of evaluating the corporate governance arrangements of the Greek banks, which are subject to an RFA, and especially the board, the board committees as well as other committees' arrangements deemed necessary. Greek banks listed on the Athens Exchange, must also comply with Greek law 3016/2002 on the corporate governance of listed companies.

#### Board of Directors (BoD)

The BoD defines, oversees and is accountable for the implementation of the governance arrangements. Unless especially authorised by the banking supervisor, the chair of the BoD must not simultaneously exercise the functions of a chief executive officer within the same institution. The BoD members must be of sufficiently good repute and have adequate knowledge and experience in the main activities of the bank and commit sufficient time to perform their duties in the institution.

#### Remuneration rules

The Banking Law transposes the CRD IV rules and restrictions on the banks' remuneration policies, applicable at group, parent company and subsidiary levels. Basic fixed remuneration should primarily reflect relevant professional experience and organisational responsibility, and variable remuneration should reflect a sustainable and risk-adjusted performance and shall not exceed 100% of the fixed component of the total remuneration for each individual; the bank's general meeting may approve a higher ratio between the fixed and variable components of remuneration provided the overall level of the variable component does not exceed 200% of the fixed component. At least 50% of any variable remuneration shall be the bank's shares or equivalent ownership interests, while at least 40% of the variable remuneration component is deferred over a period of not less than three (3) to five (5) years and the whole variable component shall be subject to *malus* or clawback arrangements.

Banks that benefit from exceptional government intervention or have been supported by state funding either under the Hellenic Bank Support Plan or under the Greek Recapitalisation Law are subject to additional restrictions on variable remuneration and BoD members' remuneration and/or special remuneration rules. The updated State Aid Commitments impose stricter rules and restrictions on the remuneration of the aided banks' staff and management.

### Internal control and compliance functions

All credit institutions are obliged to establish a risk management unit, independent from the operational functions, with sufficient authority, stature, resources and access to the BoD. Moreover, a compliance function must be established, responsible for credit institutions' compliance with the current legislative and regulatory framework, with special reference to AML issues. Subject to the bank's size and complexity of activities, the BoD is assisted by an internal audit committee, a risk management committee, a remuneration committee, a BoD members' nomination committee and other *ad hoc* committees.

### Outsourcing

The requirements and procedures for outsourcing certain of the banks' activities are set in Annex I of the BoG Governor's Act 2577/2006 and follow the relevant CEBS proposed standards. The main logic is that for outsourcing material activities of a bank, i.e. the core banking activities (requiring a banking licence) and/or risk management, compliance and internal control functions, a specific authorisation by the competent supervisory authority is required, while for outsourcing non-material activities, only a notification procedure is foreseen. In any case, the ultimate responsibility for the outsourced activities lies with the BoD and the competent officers of the bank.

Moreover, under the new NPL framework, the management of loans and/or credit agreements' claims may be assigned only to NPL management companies with a written assignment agreement having the minimum content provided by the NPL Law – this assignment also being a condition *sine qua non* for any transfer bank loan and/or credit agreement's claims.

### **Bank capital requirements**

On 26 June 2013, the EU capital requirements (CRD IV) package, namely the CRR and the CRD entered into force, implementing the Basel III global regulatory standards on capital adequacy and liquidity in the EU legal system, with the aim to strengthen the banking sector's regulation, supervision and risk management and improve its ability to absorb shocks arising from financial and economic stress.

According to these provisions as currently enforced in Greece, the minimum total capital ratio is 8%, composed of a Common Equity Tier I capital ("CET I") ratio of 4.5% with the overall minimum Tier I capital ratio being 6%. The capital ratios are expressed as a percentage of the total risk exposure amount. Banks will be required to gradually increase their capital conservation buffer to 2.5% by 2019 beyond existing minimum equity, raising the minimum CET I ratio to 7% and total capital ratio to 10.5% in 2019. The ECB or the BoG, as applicable, have additional discretions pursuant to their supervisory powers to further increase a bank's minimum capital if exposed to particular risks that justify a larger capital buffer.

More capital requirements shall be required for banking institutions in the forthcoming years. A transitional period is provided for the recognition of existing components of regulatory common equity and of the existing capital support of the public sector as CET I. For the banking sector's protection from excessive credit expansion, a countercyclical buffer of up to 2.5% shall be held as expansion of the capital conservation buffer (currently set at 0% for the first quarter of 2017). Moreover, a minimum leverage ratio, liquidity coverage ratio and net stable funding ratio shall be required by the banks in the coming years.

Except for the above capital ratios, the Banking Law requires a minimum paid-up initial capital equal to: (a) €18,000,000 for a Greek credit institution; (b) €9,000,000 for a branch

of a credit institution authorised in a third country; and (c) €6,000,000 for the pure credit cooperative as provided by Greek law 1667/1986. The above thresholds may be adjusted by the competent authority to amounts of not less than €5,000,000.

### **Rules governing banks' relationships with their customers and other third parties**

Except for the Banking Law provisions, the relationship between a bank and its customers is governed by the general provisions of Greek law. General duties of loyalty and confidentiality that each bank owes to its clients derive from the Greek Civil Code provisions on good faith obligation. The BoG Governor's Act 2501/2002 constitutes the basic legal act governing banks' conduct of business, aiming at ensuring transparency in banking transactions and determining minimum disclosure requirements. In parallel, the Hellenic Bank Association has published the Banking Code of Conduct that provides for the basic principles of banks' conduct of business.

#### Deposit-taking

Under the Banking Law, natural or legal persons that are not credit institutions (established in Greece or other EU Member States) shall be prohibited from carrying out the business of taking deposits or other repayable funds from the public. Legislative Decree 1059/1971, as amended, establishes a secrecy obligation for bank deposits with certain exceptions applicable to such obligation, such as in the process of an investigation by a competent tax or judicial authority or the BoG.

#### Lending activities

Under Greek law, interest rates and interest rate readjustments applicable to bank loans and bank credit are generally not subject to a legal maximum, but must comply with certain requirements intended to ensure clarity and transparency. The BoG Governor's Act 2501/2002 stipulates that credit institutions operating in Greece should determine their interest rates in the context of the open market and competition rules. Limitations apply to the maximum default interest rate that a bank can charge and to the compounding of interest with respect to bank loans and credits. Compounding of interest only applies if the relevant agreement so provides and is subject to certain limitations.

Joint Ministerial Decision Z1-699/2010, which transposed Directive (EC) 2008/48 on credit agreements for consumers, provides for the minimum content of pre-contractual information and consumers' rights with respect to credit agreements, introduces the obligation to assess the creditworthiness of the consumer, establishes the real total annual interest rate and regulates issues regarding credit providers and credit intermediaries. Moreover, Greek law 4438/2016, transposing Mortgage Credit Directive (EU) 2014/17 on credit agreements for consumers relating to residential immovable property, imposes new consumer protection requirements, principle-based rules and standards for the performance of services, a consumer creditworthiness assessment obligation and includes special provisions on early repayment, foreign currency loans and tying practices.

The special regime, introduced by Greek laws 3869/2010 on the restructuring of debt of individuals, 4307/2014 on the settlement of small businesses' and professionals' debts (for petitions submitted before 31.12.2016) and 4224/2013, as in force, providing for the recently issued "Code of Conduct" by the BoG for the treatment of NPLs, provides for specific procedures aiming at the settlement and amendment of debtors' obligations and the temporary suspension of enforcement/auction procedures.

### Consumer protection

Banks are subject to legislation that seeks to protect consumers from abusive terms and conditions, most notably Consumer Protection law 2251/1994 setting forth rules on the distance marketing of consumer financial services, which prohibits unfair and misleading commercial practices and includes relevant penalties. Consumer protection legislation sets out the framework for the establishment, organisation and operation of consumer associations, introduces amicable settlement of disputes as a way of resolving consumer disputes, regulates issues relating to the representation of consumers and sets the preconditions and the legal results of collective actions. At the same time, Ministerial Decision Z1-798/2008 prohibits the use of certain general terms that have been found to be abusive by final court decisions.

### Investment services

Under the MiFID law 3606/2007 and the relevant HCMC implementing decisions, banking institutions that provide investment services must categorise their clients into retail customers, professional clients and eligible counterparties, and treat them according to their experience, knowledge and risk profile, offer increased transparency on fees and expenses charged, ensure the timely and due forwarding of the orders for investment transactions, locate and prevent cases of conflict of interest and other relevant matters.

### Mechanisms addressing customer complaints

Pursuant to BoG Governor's Act 2501/2002, credit institutions must establish a "Complaints Unit" competent to review client complaints. The bank must notify the result of the complaint investigation and its final position within 45 days after the complaint submission.

Clients may also address their complaints either to the BoG, which has the power to impose administrative sanctions to the non-complying banks or to the General Secretariat of Consumer Affairs of the Ministry of Development and Competitiveness, which is responsible for investigating such complaints and may impose administrative fines.

Furthermore, the Hellenic Ombudsman for Banking-Investment Services is a private, non-profit entity that considers disputes arising from the provision of banking and investment services, aiming at their amicable settlement. Finally, the Hellenic Consumers' Ombudsman can help (i) consumers, professionals and small enterprises conducting business with banks, except those active in the areas of agriculture, forestry, fishing and transport, and (ii) investors conducting businesses with investment companies. Joint Ministerial Decision 5921/2015 determines the terms and conditions for the mediation of the Hellenic Consumers' Ombudsman in the "Code of Conduct" framework for the settlement and amendment of debtors' obligations from NPLs.

### Deposit and Investment Guarantee Scheme

Banks' customers are protected in case of bank failures by the Hellenic Deposit and Investment Guarantee Fund ("HDIGF") which is the operator of the deposit guarantee and investment compensation schemes. The HDIGF is established and regulated by Greek law 4370/2016, implementing Directive (EU) 2014/49 on the national DGS. The purpose of the HDIGF is to provide: (i) compensation to depositors; (ii) compensation to investors/customers of credit institutions; and (iii) financing for bank resolution measures. Coverage by the HDIGF Scheme is compulsory for all Greek banks, foreign branches of Greek banks and domestic branches of banks incorporated outside the EU. Branches of banks incorporated in another EU Member State are covered by the Deposit Guarantee Scheme of their home country. The maximum level of coverage is €100,000 per depositor per bank for the total amount of their deposits, regardless of the number of accounts.

### Cross-border banking activities

For the initiation of cross-border provision of services by a credit institution of another EU Member State in Greece, the competent authorities of the credit institution's home Member State shall notify in advance the Greek supervisory authority. On the contrary, the cross-border provision of banking services in Greece by a credit institution of a third country is prohibited and the respective person must be authorised by the ECB. However, under the reverse solicitation analysis, the cross-border provision of banking services to Greek residents shall not always fall under the notion of providing such services in Greece and may thus not be prohibited.

### AML framework

The AML Law and institutional framework has largely resulted from the transposition of the EU Directives and is in harmony with the Financial Action Task Force (FATF) recommendations. The BoG is responsible for supervising compliance with the AML framework. Investigation powers are reserved to the Anti-Money Laundering, Counter-Terrorist Financing and Source of Funds Investigation Authority, the law enforcement or judicial authorities, as appropriate. BoG's Banking and Credit Committee Decision 281/2009 streamlines and specifies supervised institutions' obligations, requires a documented AML policy and provides detailed instructions concerning the application of the AML methodology by customer and transaction risk category, emphasising on categories such as offshore companies, FATF non-compliant countries, etc.

### **Conclusion**

Greece has encountered and continues to encounter significant fiscal challenges and structural weaknesses in its economy and faces unprecedented difficulties in its public finances. The Greek economy continues to face significant financial and political uncertainty affecting negatively consumer and investment confidence. However, despite the extreme challenges, no Greek bank defaulted on its deposit obligations and an aggressive consolidation and recapitalisation agenda was implemented. Greek banking regulation fully complies with the respective EU framework and the four major Greek banks are undergoing challenging restructurings and are subjected to the strong supervision of the ECB. The new challenges lying ahead involve the efficient management of NPLs and the decisive implementation of the existing restructuring plans, in a recessionary and politically unstable environment.

\* \* \*

### **Endnote**

1. The terms "bank", "banking institution" and "credit institution" are used interchangeably.

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