

## COUNTRY UPDATE-Greece: Securities & Banking

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The Bank of Greece is Greece's central bank and is responsible for the overview and supervision of the banking system.

The Bank of Greece is a member of the European Central Bank (ECB) and the European System of Central Banks (ESCB). The operation of the Bank of Greece is governed by its statute (Katastatiko), which was ratified by Law no. 3424/7.12.1927 (published in the government gazette issue A 298) and codified by Presidential Decree 21/22.08.1931 (Government Gazette issue A 287).

Since then it has been amended by various resolutions of the general assembly, the latest ones dated April 24, 2012, ratified by Law no. 4099/2012 and the other dated February 25, 2013, regarding the amendment of Article 71 of the statute. It should be mentioned that since 2010 the Bank of Greece extends its supervisory authority over private insurance companies, thus acting as the regulator for two of the three pillars of the Greek financial system (the capital markets being supervised by the Hellenic Capital Market Commission, see below under the relevant heading).

The operations and responsibilities of the Bank of Greece are determined in article two of its statute and include, among others, holding and managing the country's official foreign reserves, which consist of the foreign exchange and gold reserves; supervising credit institutions, private insurance companies, as well as other entities of the financial sector; promoting and overseeing the smooth operation of payment systems, as well as of trading, settlement or clearing systems for over-the-counter transactions in securities and other financial instruments; and acting as treasurer and fiscal agent for the government.

As from the adoption of the euro as the currency of Greece, the central bank no longer autonomously performs those operations that belong to the ESCB, being an integral part of it, and acts in accordance with the guidelines of the European Central Bank, as stipulated in articles 127 and 138 of the Treaty on the Functioning of the European Union (formerly articles 105 and 111 of the Treaty Establishing the European Community) and articles three, 12, 14 sections three, 30 and 31 of the ESCB statute. The Bank of Greece may participate in international monetary and economic organisations, subject to the European Central Bank's approval, according to article six of the ESCB statute. The statute determines the bank's basic competences as above, and secures its independency and its relations with parliament and the government.

### Banking regulation

The basic rules of banking regulation are found in Law 4261/2014, which implemented [Directive 2013/36/EU](#). The Law contains provisions governing the authorization of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host member states in this regard and the provisions governing the initial capital and the supervisory review of credit institutions and investment firms.

The main objective and subject-matter of the law is to coordinate national provisions concerning access to the activity of credit institutions and investment firms, the modalities for their governance, and their supervisory framework.

Law 4261/2014 was recently amended with Law 4799/2021, which implemented Directive (EU) 2019/878 regarding, inter alia, (mixed) financial holding companies.

The Bank of Greece employs a system of supervision as described in the above directives concerning the administration of risks (credit risk, market risk, legal and operating risk), and the accounting and database systems. It is also responsible for licensing business



conduct rules. In the case of violations, the Bank of Greece may impose penalties on violators, i.e., a monetary fine or a suspension of an operating license.

### **Deposit insurance**

Prior to the financial crisis of 2008, Greek law provided for a guarantee of bank deposits up to an amount of 20,000 euros per depositor via the Deposit Guarantee Fund (DGF). According to Law 3746/2009 and due to the aforementioned credit crisis, there was an increase of the relative limit to 100,000 euros. This Law had also implemented Directives 2005/14/EC and 2005/68/EC, and changed the DGF to a "Deposit and Investment Guarantee Fund" (TEKE), and was subsequently amended via Law 4051/2012.

Law 3746/2009 was repealed by Law 4370/2016, implementing Directive 2014/49/EU, which constitutes an essential instrument for the elimination of certain differences between the laws of the member states as regards the rules on deposit guarantee schemes (DGSs) to which those credit institutions are subject. Law 4370/2016 maintained the guarantee of bank deposits up to the amount of 100,000 euros. Exceptionally, deposits resulting from real estate transactions relating to private residential properties and those that serve social purposes laid down in Law 4370/2016, are protected up to the amount of 300,000 euros for one month after the amount has been credited or from the moment when such deposits become legally transferable.

The Hellenic Deposit and Investment Guarantee Fund, is the operator of the deposit guarantee and investment compensation schemes, as well as the Resolution Fund for credit institutions, It is governed by Law 4370/2016 and it is composed of three separate schemes: (i) the Deposit Cover Scheme (hereinafter "DCS") for coverage of depositors, (ii) the Investment Cover Scheme (ICS), for coverage of investor clients and (iii) the Resolution Scheme (hereinafter "RS"), for financing of resolution measures.

All credit institutions that are licensed and operate in Greece, including those registered in the EU or abroad, whose depositors do not enjoy the same level of protection in their home country, are obliged by law to participate in the DCS. Remuneration includes the whole deposit of each depositor with the same credit institution, which is independent of the number of accounts that are held up to the limit mentioned.

Payment takes place within three months from the time that the deposits become unavailable. As its name suggests, the Hellenic Deposit and Investment Guarantee Fund has expanded its protection also to investors. Law 4370/2016 provides for a guarantee of investments up to an amount of 30,000 euros per investor via ICS of the Hellenic Deposit and Investment Guarantee Fund.

### **Payment services**

Greece implemented PSD2 ( [Directive 2015/2366/EU](#)) with Law 4537/2018. As far as the application of the Delegated Regulation 2018/389 on strong customer authentication is concerned, the Bank of Greece has announced on August 26, 2019 the granting of a phase-in period, regarding the duty to comply with the provisions of the Regulation on the strong customer authentication procedure. This grace period applies only on transactions with card payments in an e-commerce environment. Bank of Greece specified in the said announcement that it will adopt the time frame, which will be specified by EBA. In this respect it should be noted that the EBA has published an Opinion on October 16, 2019, setting the deadline for compliance with the strong customer authentication procedure to December 31, 2020.

### **Bank secrecy and money laundering**

Greece has strict banking secrecy rules that affect the operation of the Greek banking system. The rules are derived from Decree 1059/1971 as amended, regulating banking secrecy relating to bank deposits and commonly referred to as "special banking secrecy" and various general clauses of Greek Civil Code governing "general banking secrecy", covering all transactions with banks.

Banking secrecy is also protected by constitutional and penal law provisions. Greece has also implemented all EU directives on money laundering. Law 4557/2018, as recently amended and codified by Law 4816/2021, implementing the 6th AML Directive (Directive 2018/1673), has been adopted. This law repealed the previous anti-money laundering regime of Law 3691/2008.

### **Greek crisis — banking aspects**

During the financial crisis of 2008 the Greek government took measures to strengthen credit institutions with the Law 3723/2008, as amended by art. 39 of Law 3844/2010, art. 4 of Law 3845/2010 and art. 7 of Law 3872/2010 These measures included the following:

- State guarantees of wholesale debt obligations, i.e., the provision of a Greek state guarantee to all credit institutions. This guarantee related to the issuance of new medium-to-long-term loans to be agreed, and bonds to be issued or refinanced until 30/6/2011, with a three-month to three-year term but was not used extensively due to cost considerations.
- Issuance of special Greek state bonds up to a value of 8 billion euros for financing credit institutions with maturities of two, three or five years and with an escalating commission of 50 to 100 basis points, depending on the term.
- Issuance — and purchase by the state — of preference shares with features necessary to qualify as tier one capital and incorporating a special dividend of 10%. All Greek banks used this facility.

Following the eruption of the Greek financial crisis in 2010, the introduction of an EU/IMF sponsored Stabilization Programme including the relevant funding and the subsequent voluntary debt restructuring program for private sector held Greek Government debt (PSI), which was implemented during the first half of 2012, the viability of the Greek banking sector was a major concern. Banks have been subject to pressures both due to their participation in the PSI programme and the severe recession in Greece.



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The IMF Euro zone Stabilization and Recovery Program contained since its original inception a financial sector pillar to protect the stability of Greek banking system by providing capital support. The use of this has been made necessary in light of the above effects which brought all Greek banks in need of significant capital injections.

A Financial Stabilization Fund (the HFSF), funded by the government out of resources available from the IMF and EU under the program, which was established under Greek law 3864/2010 and endowed originally with 10 billion euros and later with an additional 40 billion aiming to ensure and safeguard adequate capitalization of the Greek banking system, is currently being used for this purpose.

Also, various new regulations have been introduced for the liquidation and reorganization of banks (laws 4021/2011 and 4051/2012 and 4261/2014), mainly through the introduction of the supervisor's power to impose a good bank-bad bank division where necessary. Repeated use of this power has been made during the last couple of years in connection with so called 'non-systemic', i.e. smaller banks not capable of obtaining sufficient capital, as required by capital adequacy rules.

### **Recapitalization**

The terms for the recapitalization of Greek systemic banks were made public in November 2012, when the relevant decision of the Greek Government was unveiled, following many months of discussions and negotiations between bank supervision authorities, the Greek Government, representatives of the official creditors and shareholders/management of the major banks.

Technically, the decision clarifies the procedure already stipulated in Law 3864/2010, which established the Hellenic Financial Stability Fund (HFSF), the arm of the Greek Government for injecting needed capital to the systemic banks. The Bank of Greece set the amount of additional capital required for each bank and the corresponding capital increase in April 2013.

The basic terms of the recapitalization plan are:

- Recap Plan implemented through the issuance of common shares and contingent convertible securities (Cocos).
- Common shares to be issued must be sufficient to achieve a core Tier ratio of at least 6%, whereas the remaining amount, up to the required 9%, will be covered through the contingent convertible securities issue.
- The price at which the HFSF will subscribe to the new shares to be not higher than 50% of the average market price of the shares of that credit institution during the last 50 days prior to the launch of the issue. If the closing price of the shares at the trading day prior to that date is lower than such amount, the HFSF shall acquire shares at such lower price.
- The contingent convertible securities constitute direct unsecured subordinated debt of the issuing credit institution, ranking after depositors claims and other senior debt, but before common shareholders.
- These securities to carry a 7% coupon, which will increase per 50 basis points annually. The credit institution may at any time call the securities with prior approval of the Bank of Greece, provided their capital position is not affected, i.e., the Cocos are substituted with equivalent capital.
- Any unpaid amount of contingent convertible securities shall be mandatorily converted into common shares after the passage of five years from their issuance. The conversion price shall be equal to 50% of their original issue price — taking into consideration any subsequent corporate action. Furthermore, if the credit institution decides not to pay the coupon, the remaining securities are converted into common shares at a 35% discount to their market price (50 last trading days average).
- In case the minimum private shareholder participation in the Recapitalization Plan — which has been set by law 3864/2010 at 10% of the share capital increase is not achieved, the HFSF shall have the right to convert immediately the entirety of the remaining securities to common shares, at the conversion price of 50% of the original issue price.
- The credit institutions may not distribute dividends for as long as any amount of contingent convertible securities is still outstanding.
- The HFSF issues to the private shareholders participating in the capital increase warrants for its common shares. These warrants are freely transferable and grant the right to acquire the corresponding common shares at a price equal to the subscription price paid by the HFSF increased by an annual premium of 4 to 8% depending on the year of exercise. Rights arising from the warrants may be exercised for a time period of up to 54 months from their issuance, after the lapse of which they are extinguished.

The recapitalization of the four systemic banks was completed successfully during the summer of 2013. However, it turned out that it was not sufficient given the problems with the balance sheet of all banks, as well as various subsequent adverse events. An additional round of capital increases therefore took place in 2014 and was covered through private placement.

Law 4340/2015, further amended, among others, law 3864/2010 and introduced the third recapitalization scheme for the four systematic banks. By virtue of art. 7, the HFSF would participate in the third recapitalization scheme, following a) the former application of specific measures to raise capital, as described in art. 6 of this law, b) the participation of private investors and c) the approval of restructuring plan by the European Commission. The participation of the HFSF mechanism in the capital increase would take place through the issuance of common shares with voting rights or the issuance of Contingent Convertible Securities (CoCos). The HFSF could participate in both, similarly with the first recapitalization plan. The Decree of Council of Ministers 36/02.11.2015 set out the specific requirements of the CoCos and regulated the allocation of the HFSF participation in the capital injection.

All four systematic banks in Greece increased their capital in 2015 in accordance with this plan, however, only two of them made use of the HFSF mechanism (whereas for the other two, private capital was sufficient).

### **Non-performing loans (NPL)**



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In the course of the last few years, it has become clear that dealing with NPLs is the most pressing issue facing the Greek banks. The issue has necessitated new regulation. With law 4354/2015 (NPLs law), the delegation of the servicing (i.e. legal and accounting management, negotiation and actual collection) of claims and the transfer of claims arising from loans and/or credits granted or granted by credit or financial institutions was permitted for the first time in Greece. The scope of the NPLs Law was amended by Law 4389/2016 and since May 27, 2016, not only non-performing loans fall under the scope of the NPLs law, but performing ones too.

The NPLs law, which was further amended, among others, by laws 4389/2016, 4393/2016, 4472/2017, 4549/2018, 4643/2019 and 4701/2020 provided with the establishment of special purpose undertakings, which, will be involved in the management and acquisition of NPLs.

The main provisions of the NPLs law are the following:

- Servicing of NPLs is permitted to Greek companies in the form of the special purpose societies anonymes and EEA companies which are duly established in Greece via a branch. Both of the aforementioned undertakings must have obtained a special license by the Bank of Greece. The applying service company must have a minimum share capital of 100,000 euros fully paid in cash, in order to be granted the relevant authorization.

As per the authorization procedure, the Bank of Greece (BoG), by virtue of its Decision 118/19.5.2017, laid down the regulatory and organizational framework for this type of undertakings, including inter alia the procedure for obtaining a license, the rules of governing their relationship with the debtors, rules of prudential supervision, rules for the refinancing of claims. This Decision has been amended by Decision 153/08.01.2019 of the BoG.

- The servicing of NPLs must be based on a written agreement between the lender and the servicing company, which includes the details of the particular claims under service, the description of the particular duties and the agreed servicing fee. The drafts of these agreements are subject to the supervision of the BoG for the purposes of verifying their compliance with the NPLs law.
- The BoG may authorize the servicing companies to provide further credit to debtors whose loans they have been managing, for the sole purpose of refinancing, with the prior consent of the originator of debt. The refinancing shall be based on an approved restructuring plan and the applying company shall ensure payment of capital equal to 4,500,000 euros.
- The banking secrecy is lifted to the extent required for servicing companies to perform their duties under the servicing delegation agreements mentioned above. This is a key point as Greece benefits from banking secrecy regulations.
- The sale of NPLs is valid if a servicing delegation agreement is signed between the acquiring company and the servicing company licensed and regulated by the BoG. Rights arising from the transferred receivables can only be enacted by the servicing companies. The transfer of claims arising from NPLs is permitted only through sale transaction, based on a sale-transfer agreement in writing. Entities that may acquire NPLs are the following: i) S.A. companies registered to the General Commercial Registry (G.E.MI). that according to their articles of association are able to acquire such receivables ii) Companies having a seat in the EEA-area that, according to their articles of association, are able to acquire such receivables and to iii) third-country firms that according to their articles of association are able to acquire such receivables.
- Transfer is permitted provided that within 12 months prior to such transfer, the borrower and the guarantor, if any, have been invited in writing to settle/arrange the obligations towards the original lender.
- The transfer must not have as a result the deterioration of the legal and other position of the borrower and the guarantor(s), if any.

Greece, with Law 4649/2019, has adopted an Asset Protection Scheme named "Hercules", in order to facilitate the securitisation of NPLs owned by Greek banks. According to this scheme, a private securitisation vehicle will acquire NPLs from Greek banks and sell securities to investors. The Greek state will guarantee the senior securities issued by the securitisation vehicle that contain less risk. For providing this guarantee the Greek state will receive remuneration, which will be in line with market conditions. The European Commission approved this Scheme on October 10, 2019, opining that it does not constitute state aid.

## **Securities regulation**

### *The Hellenic Capital Market Commission*

The Hellenic Capital Market Commission (HCMC) is the primary supervisory authority for investment services activities and aims to promote capital market security and integrity and investor protection. It was originally established in 1967 and was reorganised in 1991. The HCMC is a Member of the European Securities and Markets Authority (ESMA) and operates within its framework and under its auspices.

HCMC is also a Member of the International Organization of Securities Commissions (IOSCO) and it concludes bilateral and multilateral agreements with other competent Authorities for the exchange of confidential information and cooperation in respect of issues relating to its competence.

HCMC is, inter alia, responsible for:

- Approving the issuance of prospectuses and provision of information to investors.
- Licensing and supervising all investment services and fund management firms, as well as supervising the operation of capital markets and companies that are listed on the Athens Stock Exchange.
- Imposing administrative penalties (fines, suspension and revocation of operating licences).
- Signing agreements and protocols with supervising authorities for the exchange of confidential information and overall cooperation.



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## Securities regulation – EU Directive implementation

The most important laws that implement EU directives on securities regulation in Greece are as follows.

- Law 3556/2007, as amended by laws 4099/2012, 4374/2016 and recently codified with Law 4797/2021 concerning transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, implements [Directive 2004/109/EC](#).
- Law 4099/2012, as amended by laws 4209/2013, 4389/2016, 4416/2016 and 4607/2019, concerning collective investment undertakings (UCITS) implements Directives [2009/65/EC](#) [2010/78/EU](#), [2010/73/EU](#), 2011/96/EU, 2009/133/EC, 2004/113/EC.
- Regulation (EU) 2017/1129, which repeals the Directive 2003/71/EC.
- Law 4443/2016 implements measures for the harmonization of Greek Law with Regulation No. 596/2014 of the European Parliament and the Council and implements [Directive 2014/57/EU](#) on market abuse.
- Law 3461/2006, as amended, among others, by Laws 3556/2007, 3756/2009, 3943/2011 and 4141/2013 implements Directive 2004/25/EC relating to public tender offers.
- Law 4514/2018 implements the [Markets in Financial Instruments Directive II](#). Greek MiFID II Law entered into force on January 1, 2018.
- Law 4706/2020 implements Directive 2017/828 (SRD II) as regards the encouragement of long-term shareholder engagement. It also introduces a new set of rules regarding corporate governance.

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