

Management and transfer of claims from non-performing loans, Law 4354/2015

By virtue of Law 4354/2015 (Governmental Gazette Issue A' 176/16.12.2015) "Management of non-performing loans, salary provisions and other urgent provisions for the implementation of the agreement on financial targets and structural reforms" (hereafter "**the Law**"), an integrated framework regarding the management and transfer of claims from non-performing loans is introduced. In particular, Articles 1 to 3 of the Law incorporate provisions regarding the establishment and operation of two types of companies:

- ▶ Non-performing Loans Management Companies (N.P.L.M.C.)
- ▶ Non-performing Loans Transfer Companies (N.P.L.T.C.)

I. Non-performing Loans Management Companies and Non-performing Loans Transfer Companies

The management and transfer of claims from non-performing loans and credit shall be undertaken, exclusively by Societe Anonymes, having their registered offices in Greece or in another European Economic Area Member-State, which have established a branch in Greece and have the aforementioned business activities in their scope.

Bank of Greece is the competent authority for the issuance of the respective license for such companies. Said license is

published in the Governmental Gazette and Bank of Greece maintains a fully updated list with all licensed companies on its official website. By virtue of a relevant decision by Bank of Greece, the criteria, conditions and supporting documentation with respect to the licensing procedure shall be further specified.

Companies which purchase claims from non-performing loans and/or credit (N.P.L.T.C.), are obliged to maintain at any given time a minimum paid-up share capital at the amount of EUR 100,000.

The aforementioned companies, following a relevant authorization by Bank of Greece, may grant loans or credit to debtors whose loans and/or credit they have purchased, aiming exclusively at the refinancing of the debtors' loans. The management companies (N.P.L.M.C.) may grant new loans on condition that they have the prior consent of the claims' owner.

The Law explicitly prohibits the deterioration of the debtor's and the guarantor's status resulting from the sale or transfer of the claims. In addition, the Law provides that the operational business plan of the aforementioned companies should aim at the financial recovery and growth.

II. Agreements for the assignment of claims' management from non-performing loans

The Non-performing Loans Management Companies may undertake the management of claims from loans and/or credit, which are non-performing for a period exceeding ninety (90) days as well as the management of claims from performing loans. The latter shall be assigned along with claims from non-performing loans of the same debtor.

Said management companies are entitled to initiate any legal proceedings and to proceed with any other judicial measures for the collection of claims.

Additionally, they may cooperate with Debtors Briefing Companies operating in accordance with Law 3758/2009 or companies of relevant scope operating in a Member State of the European Union or the European Economic Area. The companies falling within the scope of the Law should also comply with the provisions of Law 3758/2009 for their activities with regard to the management of non-performing loans.

III. Agreements for the sale and transfer of claims from non-performing loans

The financial institutions which are licensed by Bank of Greece, the branches of foreign financial institutions in Greece, the special purpose companies of article 10 of Law 3156/2006 and the N.P.L.T.C. may sell or transfer their claims arising from any kind of loan and credit agreements, which are non-performing for a period exceeding ninety (90) days, to financial and credit institutions as well as to other N.P.L.T.C.

In case of sale of a group of claims against the same debtor, performing claims may also be included in the said group. The latter would apply if non-performing loans of the same debtor are part of that group as well.

The debtor and the guarantor should be notified via an extrajudicial notice, within twelve (12) months by the date the Law comes into force, to settle their claims in order for the latter to be eligible for sale. However, this prerequisite shall not apply in the following cases:

- ▶ Claims in disputes;
- ▶ Awarded claims;
- ▶ Claims of non-cooperative debtors as defined in the Code of Conduct of credit and financial Institutions;

Until the 15th of February 2016, the following claims are excluded by the applicable framework regarding the sale and transfer of non-performing loans:

- ▶ Consumer loan agreements;
- ▶ Loan agreements with mortgage or prenotation of mortgage on first residence;
- ▶ Loans under the guarantee of the Greek State;
- ▶ Loans and credit granted to small and medium enterprises. This particular exclusion limits substantially the scope of the sale and transfer of non-performing loans since a medium-sized enterprise is defined as an enterprise which employs fewer than 250 persons and whose annual turnover does not exceed EUR 50 million or whose annual balance-sheet total does not exceed EUR 43 million. A small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

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