

## CLIENT ALERT

### New Recovery and Resolution Regime for Credit Institutions

This Alert provides an analysis of the main provisions of the second part of the draft bill which was submitted yesterday to the Greek Parliament entitled “Urgent Measures for the Implementation of Law 4334/2015” and deals with the recovery and resolution of credit institutions, implementing EU Directive 2014/59. The Parliament is scheduled to put the bill to a vote today.

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#### MAIN PROVISIONS:

- THE AUTHORITIES RESPONSIBLE FOR RESOLUTION ACTIONS
- CONDITIONS TO BE MET FOR RESOLUTION ACTIONS TO BE TAKEN
- GENERAL PROVISIONS GOVERNING RESOLUTION ACTIONS
- RESOLUTION TOOLS

#### RESOLUTION AUTHORITIES:

The authorities responsible for resolution actions are stipulated as being:

- › The Bank of Greece in the case of credit institutions; and
- › the Hellenic Capital Markets Commission in the case of financial institutions and other companies as defined by EU Regulation 575/2013.

#### CONDITIONS TO BE MET FOR RESOLUTION ACTION TO BE TAKEN:

In its capacity as Resolution Authority, The Bank of Greece may take a resolution action in relation to an institution where all of the following conditions are met:

- › it has determined that the institution is failing or is likely to fail, for example where the assets of the institution are less than its liabilities or the institution is unable to pay its debts as they fall due;
- › there is no reasonable prospect that any alternative private sector measures or supervisory action taken in respect of the institution would prevent the failure of the institution within a reasonable timeframe; and
- › it is in the public interest that a resolution action is taken.

## **GENERAL PRINCIPLES GOVERNING RESOLUTION:**

Where an institution is the subject of a resolution action, the following principles apply to the procedure which ensues:

- › The shareholders of the institution bear any losses first.
- › The institution's creditors bear losses after the shareholders in accordance with the order of priority of their claims.
- › The management body and senior management are replaced, except in cases where their retention is considered to be necessary for the achievement of the resolution's objectives.
- › Natural and/or legal persons are held liable for any responsibility on their part for the failure of the institution.
- › Except where otherwise provided, creditors of the same class are treated in an equitable manner.
- › No creditor shall incur greater losses than they would have incurred if the institution had been wound up under normal insolvency proceedings.
- › Covered deposits are fully protected.

## **RESOLUTION TOOLS:**

Four resolution tools are provided for as follows:

1. the Sale of Business Tool;
2. the Bridge Institution Tool;
3. the Asset Separation Tool; and
4. the Bail-in Tool.

Resolution Authorities may apply individual tools or a combination of tools. It should be noted that the Asset Separation Tool may only be applied in combination with another resolution tool.

### **1. The Sale of Business Tool:**

- a. The Resolution Authorities have the power to transfer:
  - i. shares or other instruments of ownership issued by an institution under resolution; and
  - ii. any or all assets, rights or liabilities of an institution under resolution, to a purchaser that is not a bridge institution.
- b. The transfer of shares or other instruments of ownership referred to under i. above may take place:
  - i. without obtaining the consent of the shareholders of the institution under resolution or any third party other than the purchaser; and
  - ii. without complying with any of the requirements set out in the relevant company and securities' laws other than as provided for in the new law.
- c. The purchaser must have appropriate authorizations and licenses to carry out the business it acquires.

## **2. The Bridge Institution Tool:**

- a. The Resolution Authorities have the power to transfer:
  - i. shares or other instruments of ownership issued by one or more institutions under resolution; and
  - ii. all or any assets, rights or liabilities of one or more institutions under resolution,to a bridge institution.
- b. The transfer of shares or other instruments of ownership referred to under i. above may take place without obtaining the consent of the shareholders of the institution under resolution or any third party other than the bridge institution.
- c. The bridge institution must be a legal person which is:
  - i. wholly or partially owned by one or more of the public authorities, including the Resolution Authority or the Hellenic Deposit and Investment Guarantee Fund (TEKE); and
  - ii. created for the purpose of receiving and holding some or all of the shares or other instruments of ownership issued by an institution under resolution, or some or all of the assets of one or more institutions under resolution, with a view to maintaining access to critical functions and selling the institution or entity under resolution.

## **3. Asset Separation Tool:**

- a. The Resolution Authorities have the power to transfer assets, rights or liabilities of an institution under resolution or a bridge institution to one or more asset management vehicles.
- b. Again, the consent of the shareholders of the institution under resolution is not required.
- c. The asset management vehicle must be a legal entity which:
  - i. is wholly or partially owned by one or more of the public authorities, including the Resolution Authority or TEKE; and
  - ii. is created for the purpose of receiving some or all of the assets, rights and liabilities of one or more institutions under resolution or the bridge institution.
- d. The asset management vehicle manages the assets transferred to it with a view to maximizing their value through eventual sale or an orderly wind down.

## **4. Bail-in Tool**

- a. The Resolution Authorities may apply the Bail-In Tool for either of the following purposes:
  - i. to recapitalize an institution or an entity that meets the conditions for resolution; or

- ii. to convert to equity or reduce the principal amount of claims or debt instruments that are transferred either to a bridge institution or under the Sale of Business Tool or Asset Separation Tool.
- b. The Bail-In Tool may be applied to all liabilities of an institution or entity which meets the conditions for resolution with the following exceptions (which apply irrespective of whether the liabilities are governed by the law of another EU Member State or of a third country):
  - i. covered deposits, i.e. deposits of up to €100,000;
  - ii. secured liabilities, including covered bonds and liabilities in the form of financial instruments used for the purposes of hedging;
  - iii. any liability arising by virtue of the holding of client assets or money by the institution or entity under resolution, including client assets or money held on behalf of UCITS, provided that such clients are protected by the applicable insolvency law;
  - iv. any liability that arises by virtue of a fiduciary relationship between the institution or entity and another person (acting as beneficiary) provided that such a beneficiary is protected by the applicable insolvency law;
  - v. liabilities to institutions, excluding entities that are part of the same group, with an original maturity of less than seven days;
  - vi. liabilities with a remaining maturity of less than seven days owed to systems or operators of systems designated by virtue of Law 2789/2000 on settlement finality and financial collateral arrangements;
  - vii. deposits of TEKE and The Athens Stock Exchange Guarantee Fund;
  - viii. a liability to any one of the following:
    - an employee in relation to an accrued salary, termination fees, pension benefits or other fixed remuneration;
    - a commercial or trade creditor arising from the provision to the institution or entity of goods or services that are critical to the daily functioning of its operations;
    - tax and social security authorities, provided that the liabilities in question have preferred status; and
    - deposit guarantee schemes arising from contributions due in accordance with Directive 2014/49/EU.
- c. All other liabilities are considered to be eligible liabilities.
- d. In exceptional circumstances it is provided that the Resolution Authorities may exclude certain eligible liabilities subject to the conditions provided by law.
- e. Where a Resolution Authority decides to exclude an eligible liability, or class of eligible liabilities, the level of write down or conversion applied to other eligible liabilities may be increased to take account of such exclusions.
- f. Where a Resolution Authority decides to exclude an eligible liability or class of eligible liabilities and losses which would have been borne by such liabilities have not been passed on fully to other creditors, TEKE may make a contribution to the institution or entity under resolution provided that:

- i. shareholders or holders of other capital instruments have already contributed (through write down, conversion or otherwise) an amount of not less than 8% of the institution's total liabilities (including own funds) to loss absorption and recapitalization; and
- ii. the contribution of TEKE does not exceed 5% of the institution's total liabilities (including own funds).

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