

# Kelemenis & Co.

Law firm

5 Tsakalof str., 106 73 Athens, Greece  
 T: + 30 210 3612800 F: + 30 210 12820  
 E: enquiries@kelewmenis.com W: www.kelemenis.com

## Law 4354/2015 on the management, sale and transfer of NPLs

Law 4354/2015 on the "Management of non-performing loans, salary adjustments and other urgent matters for the implementation of the budgetary targets and structural reforms agreement" (the "Law") was voted on 16.12.2015. It introduces a new legal framework regulating the management and sale of non-performing loans (NPLs). In doing so, it outlines the conditions and licensing requirements for undertaking the management or acquisition of NPLs as well as the procedure which must be followed for the sale and transfer of NPLs.

### I. Eligible Companies & Licensing Requirements

The Law provides for two types of companies: NPL Debt Management Companies (NPLDMC) and NPL Debt Transfer Companies (NPLDTC). The legal entities which are eligible to undertake the management or acquire NPLs are:

- (a) Greek SA companies; and
- (b) SA companies (i.e. limited by shares liability companies) registered in other EEA Member-States, having a legal establishment in Greece through a branch.

Such companies must have such business activity

in their scope of business and (if not listed) must have registered shares. NPLDTC must also have a minimum share capital of €100,000.

NPLDMC and NPLDTC will be licensed and supervised by the Bank of Greece. The licensing procedure involves, amongst others, the filing of:

- (a) corporate documents (AoA & amendments);
- (b) data regarding the beneficial owners, any qualified holdings and the company's directors and managers;
- (c) questionnaires completed by the persons under (b) evaluating their capacity and suitability to undertake the contemplated business actions on the basis of criteria issued by the Bank of Greece;
- (d) organizational structures, business plans and reports describing the methods and basic principles that will be applicable for the management of claims, as well as any other additional information that the Bank of Greece may consider appropriate.

The respective licenses will be granted following the issue of an opinion from a 3-member committee

which will be appointed by virtue of a Joint Ministerial Decision, which is expected to be issued in due course. According to the provisions of the Law, a license shall be granted within twenty (20) working days from the filing of a complete application. The Bank of Greece shall issue the relevant licenses on the basis of the company's compliance with the Law's requirements and the shareholders' and directors' reputation, knowledge, skills, experience and compliance with suitability and capacity criteria. In order to grant the relevant license, the Bank of Greece shall also evaluate the organizational structure and the company's business plan to ensure that the company aims to promote financial recovery and development. The licensing procedure shall be further specified by a relevant act to be issued by the Bank of Greece.

## II. Agreements for undertaking the management of NPLs

NPLDMC may undertake the management of NPLs which are in delay for over ninety (90) days. The management of performing loans may also be assigned to NPLDCM provided that such performing loans are grouped with NPLs of the same debtor. Agreements for the assignment of the management of NPLs must be in writing and must at least include:

- a description of each claim and its non-performance stage;
- the scope of the agreement (i.e. legal or accounting surveillance, collection, negotiating etc.); and
- the management fee, which must not be shifted to the debtor.

The minimum content of management agreements may be further specified by a relevant act to be issued by the Bank of Greece.

NPLDMC are entitled initiate legal proceedings (including bankruptcy or restructuring proceedings) for the collection of claims and they may cooperate with companies that provide Debtor Briefing Services (regulated by Law 3758/2009) or companies operating in EU/EEA Member States. NPLDMCs must comply

with the provisions of Law 3758/2009 regulating the companies providing Debtor Briefing Services.

III. Agreements for the sale and transfer of NPLs  
Financial institutions licensed by the Bank of Greece, branches of foreign financial institutions in Greece, special purpose securitization entities of article 10 of Law 3156/2006, and NPLDTCs themselves may sell or transfer their claims arising from NPLs, which are in delay for over ninety (90) days, to financial and credit institutions as well as to other NPLDTCs. Performing loans may also be transferred provided that they are grouped with NPLs of the same debtor.

NPLs may be transferred provided that the debtor and any other liable person (i.e. guarantors) have been invited by an out-of court letter, within the last twelve (12) months prior to the transfer, to settle their claims. This requirement does not apply for claims which are under legal dispute or have been judicially attributed or belong to non – cooperative debtors (as defined in the Code of Conduct of financial and credit institutions).

Any agreements for the sale and transfer of NPLs must be in writing, must be filed with the Pledge Registry and notified to the debtors. The transfer of claims is effected upon the registration of the relevant agreement with the Pledge Registry. Transfers by way of security are not allowed.

The following claims are, until the 15th of February 2016, exempt from the provisions of the Law and may not be transferred:

- consumer loans and credits
- residential real estate loans which are secured by prenotation or mortgage for a primary residence,
- loans given to SMEs
- loans guaranteed by the Greek State

**DR. YANNIS KELEMENIS**

*(Managing Partner)*  
*yk@kelemenis.com*