A SUMMARY OF THE NEW LAW ON BANK RESTRUCTURING[1]

The draft law submitted to parliament by the government on Thursday the 27th of March is introducing into the Greek legal system the main guidelines of the EU Banking Communication. It specifies the restructuring process to be followed and clarifies the role and contribution of the HFSF and that of the Bank of Greece.

The Bank of Greece identifies the capital shortfall of the credit institution and asks for the submission of a restructuring plan which includes all the measures that the credit institution undertakes to implement to meet this capital shortfall. The banks that have already received capital support in the past are obliged to submit a modified business plan.

The restructuring plan or modified restructuring plan lists the types of measures to raise capital or reduce capital requirements to be undertaken by the credit institution, the timing and duration of each measure and the expected impact of this on the capital shortfall of the credit institution with the aim of minimizing the need for provision of state aid from HFSF. The above measures may consist, inter alia, of the following:

- Non distribution of profits,
- A share capital increase of the credit institution,
- Sale of assets and portfolios or disinvestment from sectors of activity to raise funds,
- Transfer of risk or securitization of loans,
- Liability management operations, including voluntary conversion of hybrid capital securities and subordinated debt securities that are calculated to Tier 1 capital of the credit institution,
- Identification of securities or liabilities to which it may impose compulsory measures.

The restructuring plan, original or modified, must describe, in the light of conservative estimates, how the institution will remain viable for the next three (3) to five (5) years.

Following the evaluation of viability, which also takes into account the above restructuring plan, the Bank of Greece recommends to the credit institution to submit to the Fund a request for capital support.

The credit institution shall simultaneously submit to the HFSF the restructuring plan (or amended restructuring plan), the letter of the Bank of Greece which establishes the capital shortfall and a Bank of Greece letter stating that the credit institution will be viable if they cover the capital deficit.

The Fund may, after consultation with the Bank of Greece, ask the institution to make changes or additions to this restructuring plan. <u>Following approval by the Fund, the plan shall be forwarded to the Ministry of Finance and</u>

[1] This note presents some of the main issues covered in the published draft law. The final text may be altered following discussions in parliament or last minute changes by the Ministry of Finance.

presented by the Ministry of Finance to the European Commission for approval.
Following the approval of the restructuring plan or the amended restructuring plan by the European Commission, the Fund extends the recapitalization assistance, provided that (a) the Act of the Ministerial Council has been published and (b) the EU legislation on State aid rules and the practices of the European Commission have been fully observed.
The Conditions of providing capital support have been fully adjusted to the EU Banking Communication. If voluntary measures provided for in the restructuring plan fail to meet the total capital shortfall of the credit institution, as determined by the Bank of Greece, and the application of other measures under Article 8 or Article 63B of Law 3601/2007 is likely to cause significant adverse effects on the economy and in order to keep any State aid to the least possible level mandatory measures of a "bail in" nature can be implemented. For that to happen, an Act of the Ministerial Council is required following a recommendation of the Bank of Greece.

The allocation of the cost of adjustment is made in accordance with the following order:

- Common stock,
- Preference shares and other securities that are calculated to equity Tier 1,
- All other subordinated liabilities.

The measures include (a) the absorption of any losses from the shareholders up to the point where the negative equity of the credit institution will be set to zero where necessary, by reducing the nominal value of shares of a credit institution (b) reducing the nominal value of the preference shares and other obligations that are calculated to equity Tier 1 and then, if necessary , other liabilities subordinated to the point where the net position of the credit institution will be equal to zero or (c) if the net position of the credit institution is greater than zero, the conversion of the preference shares and other obligations that are calculated to equity Tier 1 and, then, if necessary, other subordinated obligations of the credit institution in equity securities that are calculated to the same Tier 1 capital to restore the necessary level of capital adequacy for credit institutions, as defined by the Bank of Greece.

These measures may not be implemented in exceptional cases subject to prior positive decision of the European Commission in accordance with Articles 107 to 109 of the Treaty on the Functioning of the European Union provided that the Ministerial Council considers, following a recommendation from Bank of Greece, that:

- These measures may endanger the financial stability of the banking system

- The implementation of these measures may lead to disproportionate results as if the recapitalization that will be provided by the Fund is small compared to the risk weighted assets of the credit institution and / or a significant part of the capital shortfall of the credit institution has been covered through the private sector.

The law also provides a concrete framework for the Fund's disinvesting from credit institutions. The HFSF may invite interested investors to submit bids specifying the invitation process, deadlines, content of tenders and other conditions, including the provision of information from interested investors which is considered appropriate such as proof of existence of capital and letters of credit. The Fund may conclude a shareholders' agreement, if it considers it appropriate, to identify the relationships between the Fund and the new investors or group of investors. It may also grant first offer and right of first refusal to investors. The price of shares that are to be sold by the Fund are set by the General Council and may be lower than the purchase price of the shares by the Fund or the current market price.

In conclusion, the new law is in conformity to the Banking Communication with all major decisions requiring the prior approval of the European Commission and Acts of the Ministerial Council. The law reduces the risk of confrontation with EU competition authorities on state aid issues and provides comfort for the HFSF's management to take decisions without running the risk of litigation.

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