The Banking Regulation Review

Fifth Edition

Editor
Jan Putnis

Law Business Research

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EDITOR'S PREFACE

The past year has seen a number of critically important bank regulatory initiatives reach interim conclusions.

In the European Union we have seen the finalisation and coming into force of the primary measures that are required to implement Basel III, as well as – at long last – political agreement on the Recovery and Resolution Directive and the principal elements of the banking union proposals. We have also seen the first foray of the European Commission into bank structural reform, with its controversial proposal for EU legislation on that subject, after the enactment of detailed domestic bank structural reform measures in a number of member states.

In the United States, the past year has seen the culmination of a number of regulatory initiatives, including the issue of final rules implementing the Volcker Rule and the issue of rules that will require large foreign banking groups to establish intermediate holding companies for their US subsidiaries. Both of these sets of rules stem from the Dodd-Frank Act: predictions that numerous legal careers would be made by that legislation are so far proving to be accurate.

I refer to these developments above as 'interim conclusions' because, of course, even though a period of primary rule-making has reached a conclusion, the full implications are still emerging. That said, there are helpfully more certainties now about the future direction of banking regulation than was the case a year ago. The combination of that fact, generally improving western economies and shareholder pressure has made many banks take the plunge and start to reorganise and restructure.

Recovery and resolution planning work remains a powerful driver of structural reform. It does not, however, require a particularly sophisticated legal and regulatory view to conclude that the world remains far from a position where we can have confidence that a global systemically important bank could be resolved in an orderly manner today without significant disruption and damage to the world economy. The fact that some regulators occasionally argue to the contrary disregards the detailed work that still has to be done so that governments and regulators may have a good chance of attaining that confidence in the next few years. But that work is, in general, progressing and reassuringly shows no real sign of faltering yet as memories begin to fade of just how close the world came to economic calamity during the financial crisis.

Divergent approaches to structural reform in different countries could, however, make group-wide resolution more difficult to achieve. Localism, in the form of requirements that banking subsidiaries hold additional, more loss-absorbent capital and additional pools of liquidity, and have boards of directors with a significant independent membership, all have the potential to threaten the concept of a global banking group unless careful thought is given in such groups to how to address these challenges. The ways in which banking groups can best coordinate their relationships with multiple regulators are high on this agenda.

Perhaps the most difficult challenge facing banks in their relationships with their regulators is that of how to reconcile the need for close and cooperative working relationships with those regulators against the backdrop of seemingly never-ending conduct-related investigations and enforcement action. This difficulty varies according to which regulator is carrying out the investigation and the extent to which the investigation relates to matters that are historic and which the banking group concerned has taken steps to address. The challenge is clearly greatest where a major investigation concerns recent conduct and is led by a regulator with which the relevant bank requires good relations in order to achieve its commercial objectives to the satisfaction of its customers and shareholders.

It will be increasingly important for banks to appreciate the capacity of the more material investigatory and enforcement activity to shape business structures as much as structural reform itself. The changes to the ways in which certain markets and trading operations will be organised in the future in response to enforcement activity will be at least as significant as the changes that are brought to those markets and operations by, for example, resolution planning.

The upheaval that all of this implies for some banks' corporate and business structures, as well as for their staff, is combining with changes to previously held assumptions about the profitability of certain activities as Basel III capital requirements bite. The result is uncertainty, but with some grounds for cautious optimism, at least for those banking groups that are less seriously affected by conduct investigations and are firmly on the road to developing simpler, more capital-efficient structures.

Banks that have adopted a properly integrated and global approach to structural reform will, in my view, reap the benefits. While, in the short term, that is likely to be more expensive from a resourcing perspective, in the long term it should achieve savings. It is all too easy to address each regulatory initiative as it comes along, not recognising that this reactive approach runs the risk of structural muddle and missing out on developing business models that address multiple regulatory concerns at the same time. It is to be hoped that more regulators start to recognise positive proactivity on the part of banks not just as commercial astuteness but as a contribution to the restoration of trust that is required to make bank regulatory reform a success.

One increasingly important aspect of reform in the banking sector concerns the capital structures of banking groups. The requirement for more and higher quality loss-absorbing capital under Basel III, coupled with the introduction of bail-in as a resolution tool in a number of important banking jurisdictions, means that banking groups are having to rethink which company or companies they will use to raise capital and what form that capital will take. Particularly in Europe, the issue of additional Tier I capital and other contingent capital instruments has added complexity to banks' capital structures and a need for banks to engage with current and potential investors to explain those structures.

This fifth edition of *The Banking Regulation Review* contains submissions provided by authors in 56 jurisdictions between late February and mid-April 2014, as well as the chapters on 'International Initiatives' and the European Union. Preparing the chapters has been a particularly onerous task for the authors this year because many of their clients have now moved from observing the regulatory revolution that has taken place in the banking sector to taking tangible steps to reorganise in order to make themselves fit for the new world in which the sector finds itself. My thanks go to all of the authors for their dedication in completing their chapters.

Thank you also to Adam Myers, Shani Bans, Nick Barette and Gideon Roberton at Law Business Research Ltd for their patience, understanding and – above all – great effort in preparing this edition.

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Jan Putnis
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Chapter 22

GREECE

Dimitris Passas and Vassilis Saliaris[1]

I INTRODUCTION

2013 was the fifth year in recession for Greece and the third year since the commencement of the stabilisation programme jointly supported by the International Monetary Fund (IMF), the European Central Bank (ECB) and the European Commission (EC). Although the likelihood of having to leave the euro has gradually receded, the political turbulence and social unrest caused by heavy taxation and the increasingly high unemployment rate make the path to much-needed structural reform even harder. Nevertheless, confidence in the banking sector seems to be slowly returning. Since the peak of the crisis in mid-2012, spreads against 10-year German sovereigns have fallen by almost 1,800 basis points to around 700 basis points; bank deposits have increased by 9 per cent and reliance of the banks on Eurosystem financing has fallen by about 50 per cent. The crisis in Cyprus was another shock to Greek banking businesses, as the ties between the two countries extend well beyond mere economic and financial cooperation; fortunately, those predicting that the speed of the debt crisis in its neighbouring country might trigger a run on the banks in Greece were proven wrong.

Under the pressure of the unprecedented economic downturn, the Greek core banking law, Law 3601/2007, was amended by Law 4021/2011 to provide the Bank of Greece (BoG), which is the competent authority for the supervision of the Greek banking sector, with the necessary tools to deal with the current banking crisis. Law 4021/2011 was enacted with the aim of strengthening the prudential supervision exercised by the BoG and introducing recovery and resolution plans for Greek banks. It should be highlighted that although Law 4021/2011 was enacted on 3 October 2011, the resolution tools provided thereunder have already been implemented in 2011 and

1 Dimitris Passas is managing partner and Vassilis Saliaris is a senior associate at Moratis Passas Law Firm.

2012; in particular, on 9 October 2011, only a few days following the enactment of the new law, the bridge bank scheme was implemented with respect to Proton Bank, and on 17 December 2011 the obligatory transfer order scheme was implemented with respect to TBank. Following this, the only amendment to this statute worth mentioning is Law 4209/2013, which transposes and implements Directive 2011/89/EU on supplementary supervision of financial entities in a financial conglomerate.

The BoG's efforts were focused on preserving banking system liquidity and restoring capital adequacy. The national regulator adopted a strategy involving two phases: the first had as its objective carrying out an assessment on the viability of the Greek banking sector and the second involves the repayment of the state aid provided to Greek banks and the financing of recovery and development of the local economy, which is still ongoing. After the first phase was concluded the viable banks would proceed to recapitalise and the non-viable banks would enter a resolution scheme or be placed into liquidation. The two main tools used for resolution in Greece were bridge banks and transfer order schemes.

The main developments in the Greek banking sector during 2013 may be characterised as follows: (1) newly ordered and ongoing resolution procedures, (2) completion of a significant number of mergers, and (3) recapitalisation of Greek systemic banks. The Greek banking sector is undergoing a vast transformation leading to the elimination of excess capacity and the overall reshaping of the market. Whereas more than 25 banks operated in the country before the crisis, the landscape is now radically different and consists of four large pillar (systemic) banks and a network of smaller ones. These four nationally systemic banks[2] have the Hellenic Financial Stability Fund (HFSF) as their majority shareholder, with more than an 80 per cent participation in each. The recapitalisation of the four systemic Greek banks was conducted according to the requirements of Ministerial Council Decision No. 38/2012 and through a share capital increase in which the HFSF contributed bonds worth a total of €25.5 billion. Eurobank was the only pillar bank that did not meet the capital adequacy requirements, so HFSF took full control of the institution.

Following the resolution measures ordered by the BoG and the mergers and acquisitions completed, the total number of banks operating in Greece has fallen significantly. In particular, there are 10 Greek banks in the form of public limited companies, and 10 in the form of credit cooperatives; further, 19 foreign banks operate establishments in Greece, 15 having their head offices in EU or EEA Member States and four outside this area.

II THE REGULATORY REGIME APPLICABLE TO BANKS

i Legal framework

As mentioned above, Law 3601/2007 on the taking up and pursuit of the business of credit institutions, capital adequacy of credit institutions and investment firms, and other provisions, as in force (the Banking Law), constitutes the core banking law. The

2 Alpha Bank, National Bank of Greece (NBG), Eurobank and Piraeus Bank.

Banking Law has transposed into Greek law the Banking Consolidation Directive[3] and the Capital Adequacy Directive,[4] which implements Basel II accord and provides for the establishment of a single financial services area within the EU and EEA on the basis of the principles of mutual recognition, domestic Member State supervision and single passport.

Pursuant to the Banking Law:

a ‘credit institution’ is defined as an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account; the core banking activity is deposit taking, since this activity is reserved solely for credit institutions;

b credit institutions are licensed to provide all banking activities listed in Annex I to the Banking Consolidation Directive;[5] and

c the competence for supervision of the banking sector is conferred upon the BoG.

Besides, in accordance with Law 3691/2008 implementing Directives 2005/60/EC and 2006/70/C on the prevention and control of money laundering and terrorist financing (the AML Law), the BoG is also appointed as the competent authority for the supervision of banks’ compliance with the AML Law.

In conjunction with the Banking Law, the basic regulatory regime applicable to banks is further supplemented by the BoG Governor’s Acts, BoG Executive Committee Acts, BoG Banking and Credit Committee Decisions and BoG Credit and Insurance Committee Decisions regarding:

a granting of banking licences;

b technical provisions of the aforementioned directives with respect to Basel II, setting out the minimum capital requirements in relation to credit, operational and market risk, as well as liquidity;

c internal control systems and corporate governance issues;

d obligations arising from the AML Law; and

e transparency in banking transactions.

Finally, the rendering of investment services is regulated by Law 3606/2007, which transposed MiFID into Greek law (the MiFID Law).[6] As per the MiFID Law, banks are permitted to provide all investment services and activities listed in Annex I to MiFID;[7] and the competence for supervision of the conduct of investment services and activities by banks, as regards compliance with MiFID provisions set out for the clients’ protection, is conferred upon the Hellenic Capital Market Committee (HCMC), while the BoG is competent only with respect to MiFID obligations of an organisational nature.

3 2006/48/EC.

4 2006/49/EC.

5 2006/48/EC.

6 2004/39/EC.

7 2004/39/EC.

ii Banking regulator

As has already been indicated, the BoG is the supervisory authority of the banking sector in Greece, as well as of banks' compliance with the AML Law. As such, the BoG is a member of the European Banking Authority. Recently, by Law 3867/2010, the BoG has been also assigned the supervision of private insurance sector.

In particular, pursuant to the Banking Law[8] subject to supervision by the BoG are Greek banks (i.e., banks licensed in Greece, including their branches abroad); such supervision is exercised on both individual and consolidated basis; and Greek establishments of offshore banks having their head office outside the EU or EEA.

Following the home Member State regulator rule of competence, Greek establishments of offshore banks licensed in EU or EEA Member States are not subject to supervision by the BoG, except for liquidity and AML Law purposes.

The BoG has been incorporated in the form of a *société anonyme* (i.e., a company limited by shares), but it is not regulated by Law 2190/1920 on *sociétés anonymes*. The operational framework of the BoG is regulated by its Statute, which has been ratified by law. The BoG's Statute may be amended by a decision of the General Meeting of Shareholders of the BoG, subject to ratification thereof by law. BoG shares are registered and listed for trading in the Athens Stock Exchange. As per its Statute, the Greek state and public enterprises may not, directly or indirectly, hold BoG shares exceeding, in the aggregate, 35 per cent of its nominal issued share capital; persons subject to supervision by the BoG (as well as enterprises connected to them, board members or administrators thereof and their spouses and relatives up to second degree) may not hold BoG shares; save for the Greek state, public enterprises and social security funds, BoG shareholders attending a General Meeting of Shareholders may not exercise voting rights exceeding 2 per cent of BoG share capital; further the BoG and its decision-making bodies shall not take orders from the government or any organisation.

The main decision-making bodies and executives of the BoG are the following:

a the General Meeting of Shareholders;
b the General Council;
c the Monetary Policy Council;
d the Governor and the Deputy Governors;
e the Credit and Insurance Committee (former Banking and Credit Committee);
f the Resolution Measures Committee; and
h the Executive Committee.

The supervision of banks is entrusted to the BoG Department for the Supervision of Credit and Financial Institutions.

When exercising its supervisory authorities, the BoG has the role of an independent administrative agency exercising public powers. As per the Banking Law,[9] the BoG's powers in the field of prudential supervision are exercised through acts of the BoG Governor or any body acting upon authorisation by the BoG Governor (especially

8 Article 25.

9 Ibid.

the BoG Credit and Insurance Committee, the former Banking and Credit Committee). The BoG Governor's Acts, Executive Committee Acts, and BoG Credit and Insurance Committee Decisions have the force of law. Such acts and decisions may also be issued for the transposition into Greek law of community law provisions that fall within the scope of the BoG's supervision authorities.

Besides its supervisory duties, which also include the macro-competence for enhancing the resistance of the financial system and for reducing the accumulation of systemic risks, the BoG's tasks may be divided into two categories:

a duties relating to the Eurosystem under the auspices of the European Central Bank, including the BoG's participation in the single monetary policy, the monitoring of the payment and settlement system, the issuance of euro banknotes etc.; and

b duties that entail the management of the country's official reserve assets, the keeping of the deposit accounts of the government and public law legal entities, the publication of statistics that relate to the monetary and credit aggregates concerning the Greek economy, the issuance of acts that are carried out by its committees and the conduct of researches focusing on the analysis of the Greek economy in order to provide comprehensive information on the prospects of the Greek economy.

iii Greek banks

Pursuant to the Banking Law, Greek banks are licensed by the BoG and may only be established and operate as *sociétés anonymes* or in the form of credit cooperatives; in addition, Greek banks should have their real management centre (i.e., head office) located in Greece.

A Greek bank in the form of a *société anonyme* is regulated by the Banking Law and Law 2190/1920 on *sociétés anonymes*. In order to be granted a banking licence by the BoG, it must have fully paid-up initial share capital of at least €18 million with registered shares.

A Greek bank in the form of a credit cooperative is regulated by the Banking Law and Law 1667/1986. In order to be granted a banking licence by the BoG, it must have fully paid-up initial share capital of at least €6 million. Under its banking licence, a credit cooperative may transact banking business solely with its members, other banks and the Greek government. Subject to prior approval by the BoG it may also carry out banking transactions with non-members up to an amount equal to 50 per cent of its total loan or deposit business.

iv EU or EEA-licensed offshore banks

As already stated, the Banking Law has fully implemented the single passport principle. Therefore, an EU or EEA offshore bank licensed to provide banking activities in its home Member State may provide such activities in Greece, either through an establishment or on a cross-border basis, subject to relevant notification sent to the BoG by its home Member State regulator. In case of an establishment, the relevant notification should include the branch's programme of operations and organisational structure, including its internal audit – and risk management system, the persons responsible for the branch's activities, the amount of own funds and the sum of capital requirements of the bank, as well as information regarding compensation schemes applicable in its home Member State. As aforesaid, the branch is subject to prudential supervision by the home Member State regulator, not the BoG, except for liquidity and AML Law purposes.

Following the above notification, an EU or EEA offshore bank may carry out banking activities in Greece covered by its passport either through a branch or on a cross-border basis in the same manner as these activities are carried out in its home Member State. Carrying out banking activities in Greece through a branch or on a cross-border basis is, however, subject to certain local rules on consumer and investor protection, local transparency rules preventing deceptive and misleading advertising and other mandatory rules intended to protect the general public interest, as those are narrowly interpreted in the light of the principles of proportionality, minimum harmonisation and avoidance of dual restrictions.

In the event of non-compliance of the EU or EEA offshore bank with the Banking Law, the BoG shall inform the home Member State regulator accordingly, in order to take all appropriate measures. If, despite the measures taken by the home Member State regulator (previously communicated to the BoG) or because such measures prove to be inadequate or are not available in the home Member State, the offshore bank persists in violating the local rules, after informing the home member state regulator the BoG may take appropriate measures to prevent or to punish further irregularities and, insofar as is necessary, to prevent the offshore bank from initiating further transactions in Greece. Prior to the foregoing procedure, the BoG may take appropriate preventative measures for the protection of the interests of depositors, investors and other clients, notifying for these purposes the European Committee, the European Banking Authority and the home Member State regulator.

Finally, pursuant to the MiFID Law in conjunction with the Banking Law, an EU or EEA offshore bank licensed to provide investment services in its home Member State may provide such services in Greece, either through an establishment or on a cross-border basis, subject to relevant notification to the HCMC sent by their home Member State regulator. Following such notification, an EU-licensed and passported offshore bank may provide investment services in Greece:

a through a branch, in compliance with MiFID Law provisions on the protection of investors and on transparency, subject to relevant supervision by the HCMC; or

b cross-border, in the same manner as in its home Member State.

v Non-EU or non-EEA-licensed credit institutions

Pursuant to the Banking Law in conjunction with the MiFID Law, non-EU/EEA offshore banks licensed to conduct banking and investment activities in their home Member State may carry out such activities in Greece, either through an establishment or on a cross-border basis, subject to obtaining a licence granted by the BoG. In particular:

a establishment: to be granted a licence by the BoG, the branch must have fully paid-up initial capital of at least €9 million. The branch is subject to supervision by the BoG; and

b cross-border: upon granting the relevant licence, the BoG sets the terms for the carrying out of cross-border banking and investment activities in Greece, taking into consideration the supervision rules of the home Member State. In any case, carrying out of cross-border banking and investment activities is subject to certain local rules on consumer and investor protection, local transparency rules preventing deceptive and misleading advertising and other mandatory rules intended to protect the general public interest.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

Within its authority as prudential regulator, the BoG seeks to protect the soundness, financial health and stability of the financial system and ensure that banks do not undertake excessive risks that may endanger their performance. Prudential regulation by the BoG primarily involves a bank's solvency and liquidity, as well as its operation in a proper and transparent manner. By exercising its regulatory powers the BoG:

a sets out rules of general application to all banks, specifying the requirements and duties provided for in the Banking Law; rules on regulatory reporting, capital adequacy and liquidity requirements are the core areas that fall within the scope of prudential regulation by the BoG;
b sets out special rules applicable to a specific bank, on an ad hoc basis;
c assesses the strategies, internal procedures and mechanisms that the banks implement in order to comply with their obligations arising from the Banking Law;
d assesses the risks undertaken by the banks and whether such risks are sufficiently covered by the banks' own funds;
e monitors the banks' compliance with their obligations arising from the Banking Law, by setting out general disclosure requirements, as well as by requesting written explanations and carrying out on-the-spot audit visits on an ad hoc basis;
f determines minimum contractual information that banks should disclose to their customers for transparency purposes; and
g imposes sanctions on banks.

Disclosure requirements are specified through the BoG Governor's Act 2651/2012 on periodic reporting to the BoG. In particular, pursuant to this Act banks are required to report to the BoG periodically (i.e., every three months, every six months or annually) information relating to, *inter alia*, their share capital structure and holding, capital reserves and capital adequacy ratios, credit risks, counterparty credit risks, foreign exchange settlement risks, market risks, currency risks, transaction portfolio, operational risks, large exposures, liquidity risks, interbanking market transactions, financial statements, covered bonds, internal audit systems, prevention of money laundering and terrorist financing, IT systems, etc.

ii Management of banks

The corporate governance regime applicable to banks is primarily set out in the BoG Governor's Act 2577/2006, as in force, on Framework of operational principles and criteria for the evaluation of the organisation and internal control systems of credit and financial institutions and relevant powers of their management bodies. Further, in terms of Greek banks whose shares are listed for trade on the Athens Stock Exchange, Law 3016/2002 on corporate governance of listed companies should be also considered.

The above Act sets out the minimum corporate governance requirements that all banks should satisfy. In particular, the following applies pursuant to this Act:

a The board of directors consists of executive and non-executive members. At least one of the members of the board of directors should be a non-executive and independent member. Where there is no risk management committee and the relevant duties are assigned to board members, the board members having the above-mentioned traits (i.e., non-executive and independent) should be at least two.

b There should be a distinction between executive and supervising duties of the board members. Moreover it is recommended that the executive role and responsibilities of the managing director should be segregated from the supervisory duties of the president of the board.

c *Inter alia*, the board of directors is responsible for:
- drawing up and approving of a strategic plan for at least one year;
- ensuring that there is an appropriate risk management policy by determining the maximum acceptable exposure limits for each type of risk, as well as an appropriate compliance policy;
- establishing an appropriate environment within the credit institution ensuring that all officers at all hierarchical levels understand both the nature of every risk inherent in the activities in which they are engaged or oversee and the need to address them effectively;
- adopting a code of ethics applicable to the senior management and the staff; and
- drawing up a remuneration policy and monitoring its implementation.

d Subject to the bank's size and the complexity of its activities, the board is assisted by committees. Such committees are the internal audit committee, the risk management committee, the remuneration committee and other ad hoc committees.

e The following units, which are independent from one other, should be established:
- an internal audit unit that reports to the internal audit committee;
- a risk management unit that reports to the risk management committee and the board; and
- a compliance unit that is subject to control by the internal audit unit; the compliance manager may be also appointed as AML officer.

Further, pursuant to the above Act, each bank should have an organisational structure and proceedings that ensure:

a the assignment of specific roles and responsibilities;

b appointment of officers authorised to communicate with the BoG and other authorities;

c crisis management;

d a business continuation (COB) plan;

e direct or indirect involvement of at least two employees in each activity (the 'four eyes principle);
f separation of the duties and operations of the front line from the back office;
g the involvement of the internal audit, compliance and risk management units in each product programme or significant business decision;
h financing of board members or general managers on an arm's-length basis; and
i appointment of external auditors for the assessment of the internal audit system at least every three years.

Remuneration policy applicable to banks is regulated by Article 26 of the Banking Law, as amended by Paragraph 4 of Article 16 of Law 4002/2011, and the BoG Governor's Act 2650/2012, which implement into Greek law Items 1, 3 and 5 of Article 1 and Annex I to Directive 2010/76/EU on, *inter alia*, 'the supervisory review of remuneration policies'. The BoG should collect information on the number of individuals per Greek credit institution in pay brackets of at least €1 million, and transmit such information to the European Banking Authority.

As regards limitations on the amount of remunerations:

a in the event that a bank has received state aid, then pursuant to the aforementioned Act:
- variable remunerations are limited to a percentage of the sum of net profits, in case such remunerations are not consistent with the maintenance of a sound capital basis and the bank's exit from the state aid programme in due time;
- the BoG requires the bank to review remunerations and may also require the setting of limits to the remuneration of the persons responsible for the orientation of the bank's activities; and
- the bank should not pay variable remunerations to the persons responsible for the orientation of the bank's activities, unless there is prior approval by the BoG;

b as per the above Act, at least 40 per cent of the variable remuneration component is deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question; and

c pursuant to Law 3723/2008, in case a bank has received state aid in the form of preferential shares paid up by the Hellenic Republic, so long as the Hellenic Republic holds such preferential shares:
- the remuneration of each of the bank's board president, managing director, board members, general officers and the deputies thereof may not exceed the remuneration of the BoG Governor; and
- no bonus is paid to the above persons.

In the case of a banking group, the parent credit institution must take all necessary measures to effectively incorporate into the group's strategy, as regards organisational and internal control system-related issues, financial sector companies (including insurance companies) that are controlled by it, or that are subject to consolidated supervision, in order to ensure:

a that the systems and procedures applied within the group companies are compatible and tailored to both the specific characteristics of each company and to the needs of the group's organisational structure;
b monitoring of all major risks on a group basis; and
c that all group companies have adequate reporting procedures for supervision on consolidated basis and the supervision of capital adequacy.

Moreover, the parent credit institution's board of directors (BoD) must ensure, through proper coordination and agreements, the allocation of responsibilities, without unnecessary overlaps, and the coordination of measures in relation to the management of major risks, internal control and compliance functions, as well as the implementation of provisions on the prevention and suppression of money laundering and financing of terrorism.

iii Regulatory capital and liquidity

The provisions of the Banking Consolidation Directive,[10] the Capital Adequacy Directive[11] and the Own Funds Directive[12] on capital adequacy of credit institutions have been transposed into Greek law through Article 27 of the Banking Law and a set of BoG Governor's Acts.[13]

In particular, Article 27 of the Banking Law determines the minimum capital requirements that each bank should satisfy, in order to sufficiently cover the risks undertaken by it. Accordingly, a bank's own funds should be on a constant basis more than or equal to the sum of the capital requirements against credit risks, which should be at least equal to 8 per cent of the sum of the risk-weighted large exposures; foreign exchange risk, settlement risk, commodities risk and operational risk; and positioning risk, counterparty risk and excess of large exposures limits.

For the purposes of capital requirements' calculation, banks are given the discretion to choose between the standardised approach and the internal ratings-based approach. The choice of the internal ratings-based approach is subject to prior BoG approval.

Further, the BoG Governor's Act 2630/2010 determines the specific items that a bank's own funds should consist of. Such items are:
a paid-up capital;
b share premium accounts;
c reserves and re-evaluation reserves;
d retained earnings;
e interim profits; and
f hybrids, such as additional basic own fund items.

10 2006/48/EC.
11 2006/49/EC.
12 2009/11/EC.
13 2588/2007, 2589/2007, 2590/2007, 2592/2007, 2594/2007, 2595/2007, 2620/2009, 2630/2010, 2635/2010, 2645/2011 and 2646/2011

Inter alia, the following items are deducted form a bank's own funds:

a own shares;
b intangible assets;
c holdings in other credit or financial institutions exceeding 10 per cent;
d holdings in insurance companies, reinsurance companies and insurance holding companies at least equal to 20 per cent;
e loans granted for the acquisition of bank's shares or shares of other companies in the bank's group; and
f holdings in other companies exceeding the bank's own funds at a percentage of 60 per cent in aggregate, or 15 per cent on a solo basis.

Capital adequacy, corporate governance, large exposures and qualifying holdings in other companies are subject to supervision by the BoG not only on an individual, but also on a consolidated basis. The Banking Law[14] provides for the consolidated supervision of financial holdings and financial conglomerates. The BoG draws a list of all financial holding companies that are subject to supervision by the BoG on a consolidated basis and communicates such list to the competent authorities of the other Member States, the European Banking Authority and the European Committee. In particular, subject to consolidated supervision by the BoG are:

a a Greek bank (i.e., licensed in Greece) that has a holding of at least 20 per cent in other credit or financial institutions;
b a Greek bank that is a subsidiary of a parent financial holding company incorporated in Greece;
c a Greek bank that is a subsidiary of a parent financial holding company incorporated in an EU Member State, provided that the latter does not have any other subsidiary bank in any EU Member State other than Greece; and
d a Greek bank that is a subsidiary of several financial holding companies with head offices in different EU Member States, including Greece, and there are other subsidiary credit institutions in more than one of these EU Member States; or a Greek bank that has as its parent the same financial holding company as other subsidiary credit institutions licensed in other EU Member States and none of these credit institutions has been licensed in the EU Member State where the financial holding company has its registered office – provided that the Greek bank has the largest balance sheet total among all subsidiary credit institutions.

Consolidated supervision includes the following companies in which a bank has a holding of at least 20 per cent:

a credit institutions;
b financial institutions;
c investments services companies;
d companies whose business activity is supplementary to the activities of a credit institution (e.g., real estate companies, information technology companies); and

14 Articles 33 to 44.

e any other company that the BoG considers necessary for the effective exercise of supervision, especially with respect to capital adequacy and risk management.

As regards the minimum required capital that a bank should hold, pursuant to the Banking Law[15] in order to be granted a licence by the BoG, fully paid-up capital is required of at least €18 million for Greek banks in the form of a *société anonyme*; €6 million for Greek banks in the form of a credit cooperative; and €9 million for the Greek branch of a non-EU/EEA licensed bank.

The minimum required initial capital may be adjusted by a BoG decision to amounts of not less than €5 million. In the event that the initial capital is not fully paid up in cash, the BoG must decide, on an *ad hoc* basis, which other assets and to what proportion can be contributed instead, taking into account the liquidity and solvency standards applying to credit institutions. In the event that an already operating company is to be converted into a bank, at least 80 per cent of its assets shall be paid up entirely in cash, deposits, securities traded in regulated markets and short-term loans or other credit extended on the basis of banking criteria. A bank's own funds may not fall below the above-mentioned amount of minimum required initial capital.

Finally, a bank's liquidity regime is regulated by the BoG Governor's Act 2614/2009, as amended by the BoG Governor's Act 2626/2010. This Act determines, in accordance with the Liquidity Management Guidelines of the Committee of the European Banking Supervisors, the obligatory liquidity ratios that each bank should maintain on both an individual and consolidated basis, and further provides for banks' obligation to submit liquidity set ratios and relevant data. In particular, pursuant to this Act:

a Greek banks and Greek branches of offshore banks should have minimum liquidity ratios of at least 20 per cent;

b the minimum required liquidity ratios should be observed on both an individual and consolidated basis;

c subject to prior BoG approval, the minimum required liquidity ratios may be reduced up to 10 per cent for a period not exceeding two years with respect to Greek banks that do not carry out deposit taking; and

d the BoG may discharge the Greek branch of an EU or EEA offshore bank from observing the minimum required liquidity ratios, if the EU or EEA offshore bank undertakes towards the BoG to cover the Greek branch's liquidity needs at any time in an equivalent manner.

iv Recovery and resolution

As already mentioned, the Banking Law has been recently amended by Law 4021/2011 on the enhanced measures for the supervision and reorganisation of credit institutions (Law 4021). Law 4021 incorporated to a great extent the EC consultation paper published in January 2011 on the technical details of a possible EU framework for bank recovery and resolution. As per its explanatory report, Law 4021 purports to enhance the framework for banks' supervision and control and to introduce resolution powers to

15 Article 5.

protect financial stability and public confidence in the Greek financial system. To achieve the aforementioned goals, Law 4021 implements measures that intend to:

a reinforce the BoG's supervisory powers;

b extend the BoG's role and powers;

c enable the BoG to enforce specific preventive and resolution measures in relation to banks; and

d establish a separate resolution scheme within the Hellenic Deposit and Investment Guarantee Fund (HDIGF), purported to finance the resolution measures under Law 4021.

In particular, Law 4021 provides for preventative measures that make it easier for the BoG to tackle in advance any issues that may arise in cases where banks do not comply or have difficulties in complying with the Banking Law and may cause general systemic risk. The relevant measures that have been implemented in the Banking Law[16] enable fast and decisive action, as they put in place well-defined powers and processes and eliminate former legal uncertainty about when the BoG may intervene and what specific actions the BoG may take. In particular, the BoG is authorised to request from banks or order, *inter alia*, the following preventative measures:

a holding of own funds in excess of the minimum capital requirements set in accordance with the general applicable regime on capital requirements;

b improvement of the corporate governance arrangements and internal control systems and their strategies and procedures for the assessment and maintenance of capital that sufficiently covers the risks to which they are exposed;

c implementation of a special capital adequacy or asset management policy;

d setting of restrictions or limits to the activities carried out or to their branch network or to the liquidation of assets;

e reduction of the risks related to their activities, products and systems;

f enhancement of their own funds through net profits, by setting restrictions to the distribution of dividends;

g requirement of prior BoG approval of transactions that may endanger the banks' solvency; the term of this measure should not exceed three months;

h limitations of variable remunerations to a percentage of the sum of net profits, in case such remunerations are not consistent with the maintenance of a sound capital basis;

i drawing up of a recovery plan – the BoG Governor's Act 2648/2012 sets out details about the necessary elements that a recovery plan should include, as well as the procedure for the submission thereof to the BoG;

j share capital increase; and

k appointment of an administrator.

Further, Law 4021 adopts resolution measures with a view to protecting the financial stability and to enhancing the clients' confidence in the financial system; resolution

16 Article 62.

measures aim at reserving the financial stability, minimising the resolution costs and protecting depositors and investors. In particular, the BoG may order the following resolution measures:

a the appointment of an administrator;

b the granting of an extension for the payment of the bank's due and payable debts in whole or in part for up to 20 business days, which may be extended once for another 10 business days;

c the obligation of the bank to increase its share capital; any pre-emption rights of existing shareholders are excluded from such share capital increase;

d the transfer of all or part of the bank's assets, rights, obligations, claims or contracts to another bank or person; the transfer takes place through a secret tender process between the BoG and the interested persons on the basis of a fair valuation of such assets by one or two independent auditors appointed by the BoG; among the assets that are obligatory transferred are deposits up to the amount covered by the HDIGF Deposit Scheme (i.e., €100,000 per depositor) and the deposits of the Greek state and government bodies, while subordinated debts are excluded from such transfer; further, employment contracts are not automatically transferred, unless such transfer is specifically provided for; in case the total value of liabilities transferred exceed the total value of the assets transferred, then such deficit is covered by the HDIGF as follows:[17]
  - an amount equal to the part of the transferred deposits which is covered by the HDIGF Deposits Scheme, after deducting therefrom the value of the assets transferred, is paid by the HDIGF Deposits Scheme; and
  - any excess amount is paid by the HDIGF Resolution Scheme;

e the establishment of a bridge bank and the transfer thereto of all or parts of the bank's assets and liabilities; the bridge bank structure is implemented by decision of the Minister of Finance, upon proposal by the BoG; upon establishment of the bridge bank, the bank's banking licence is revoked and the bank is placed under special liquidation; the bridge bank's initial share capital is fully paid by the Hellenic Financial Stability Fund (HFSF), which further injects the necessary capital so as to secure that the bridge bank meets the capital adequacy requirements; the purpose of the establishment of the bridge bank is to secure the continuity of banking transactions and payment services in order to maintain financial stability and to preserve the value of the transferred assets; the bridge bank may operate for a period up to two years, which may be extended for two years; among the assets that are obligatory transferred to the bridge bank are deposits up to the amount covered by HDIGF Deposit Scheme (i.e., €100,000 per depositor) and the deposits of the Greek state and government bodies, while subordinated debts are excluded from such transfer; further, employment contracts are not automatically transferred, unless such transfer is specifically provided for; in case the total value

17 Pursuant to Law 4051/2012, however, until 28 February 2013 the above deficit was covered by the HFSF.

of liabilities transferred to the bridge bank exceed the total value of the assets transferred, then such deficit is covered by HDIGF as follows:[18]

- an amount equal to the part of the transferred deposits which is covered by the HDIGF Deposits Scheme, after deducting therefrom the value of the assets transferred, is paid by HDIGF Deposits Scheme; and
- any excess amount is paid by HDIGF Resolution Scheme.

The trigger events for the implementation of the foregoing resolution measures by the BoG are:

a the occurrence of any event that may invoke the appointment of an administrator;
b the need to ensure the continuity of essential financial services and to avoid adverse effects on financial stability, including the prevention of contagion; and
c the need to ensure public confidence, especially depositors' confidence, in the financial stability and the proper operation of the financial system.

Finally, as regards the appointment of an administrator:

a the BoG has the discretionary power to appoint an administrator in the following circumstances:
  - the bank fails or refuses to increase its own funds or obstructs in any manner whatsoever the supervision exercised by the BoG;
  - the bank disregards its legal obligations on a continuous basis or its business activities are carried out in a manner that it endangers the bank's solvency or the depositors' interests;
  - the bank does not hold adequate own funds or cannot fulfil its obligations, especially regarding the repayment of deposits and other repayable funds; and
  - the bank requests itself the appointment of an administrator;

b the appointment of an administrator by the BoG is deemed mandatory in the following instances:
  - the bank has not implemented the preventative measures or the recovery or resolution plan ordered by the BoG;
  - the bank has not proceeded with the share capital increase ordered by the BoG; and
  - the bank does not conform to the resolution measures ordered by the BoG regarding the transfer of its assets to third parties or to a bridge bank.

Pursuant to BoG Governor's Act 2653/2012, the competence for the issuance of all decisions for the implementation of resolution measures (either of general application or on an *ad hoc* basis) lies with the BoG Resolution Measures Committee.

Greek Law 3723/2008 has established capital support programmes, the deadline for participation in which lapsed on 31 December 2012, in the following forms:

a loans issued by Greek banks that were guaranteed by the Hellenic Republic; or

18 Pursuant to Law 4051/2012, however, until 28 February 2013 the above deficit was covered by the HFSF.

b share capital increases by Greek banks operating in the form of a *société anonyme*, through the issuance of non-transferable and non-negotiable preferential shares which are fully paid up by the Greek state. These preferential shares:
- offer to the Greek state a 10 per cent fixed return; payment thereof is suspended only in the event such payment would result in reduction of the bank's own funds below the minimum required ratio;
- may be redeemed by the bank at their issue price within five years, subject to BoG approval; in the event that the preferential shares are not redeemed, the fixed return thereof may by decision of the Ministry of Finance be increased by 2 per cent per each year after the lapse of five years; and
- are converted into ordinary shares, by decision of the Minster of Finance, in case they are not redeemed by the bank as per above due to non-satisfaction of the capital adequacy ratio set out by the BoG.

As long as the Greek state is holder of these preferential shares it has the right to appoint a representative in the bank's board of directors; such representative has a veto right to key corporate decisions of both the bank's board and the general shareholders' meeting relating to business strategy, distribution of dividends, remuneration of the board's president, the managing director, board members, general officers and the deputies thereof, or to any other matter that may jeopardise the depositors' interests or have a material adverse effect on the liquidity, solvency or proper operation of the bank; further, the above representative has free access to the banks books and records.

The HFSF was established in 2010 by Law 3864/2010 with the aim of providing a safety net for the Greek banking system for the maintenance of its stability, by providing equity capital in case of a significant decline in capital reserves. In particular, pursuant to Law 3864/2010, as recently amended, and Cabinet Act 38/2012 that has been recently issued for the implementation thereof:

a capital equity by the HFSF is provided upon application by the bank, provided that the BoG has assessed the bank's sustainability; the bank's application should be accompanied by the following documents:
- a business plan approved by the BoG, that ensures the bank's sustainability within the next three to five years based on a conservative valuation, providing, *inter alia*, for share capital increase, sale of a business sector, reduction of costs etc.;
- a detailed time schedule for the implementation of the measures described in the above business plan; and
- a detailed restructuring plan, the implementation of which does not exceed three years and may be extended for two years; following its approval by HFSF, this plan is submitted for approval by the European Committee;

b the equity may be provided in the following forms:
- share capital increases by Greek banks, through the issuance of ordinary shares which are fully paid up by HFSF; or
- contingent convertible securities issued by Greek banks and fully covered by the HFSF;

c in the event of a share capital increase:

- if the private sector participates in the relevant share capital increase with an amount at least equal to 10 per cent of the total share capital increase, the exercise by the HFSF of its voting rights at the General Meeting of the Shareholders is limited only to decisions for the amendment of the articles of association (including share capital increase and decrease), merger, split, conversion, liquidation, revival, extension of the bank's term, transfer of assets (including sale of subsidiaries) or to other decisions subject to advanced quorum and majority requirements; and
- HFSF must decide on the procedure for the disposal of the bank's ordinary shares within five years, if the private sector participated in the relevant share capital increase with an amount at least equal to 10 per cent of the total share capital increase, otherwise within two years;

d contractual interest rate of 7 per cent, increased by 50 base units per year, applies on the contingent convertible securities issued by the bank; until such securities are fully discharged or converted into ordinary shares, no dividends are distributed to the bank's shareholders; these securities are convertible into ordinary shares under certain conditions, *inter alia*:

- after five years as of the date of issue thereof;
- upon bank's decision not to pay interests on the securities;
- upon the occurrence of a sustainability event (i.e., decision for state aid other than by HFSF under Law 3864/2010, without which the bank is not deemed by the BoG to be sustainable); or
- if the bank's core Tier I ratio, provided for in EBA/REC/2011/1 Recommendation of the European Banking Authority, falls below 7 per cent;

e the HFSF has full right to exercise its voting rights with respect to the bank's ordinary shares held by the HFSF (either following a share capital increase or conversion of securities into shares) in the following instances:

- the above-mentioned minimum participation of the private sector in the relevant share capital increase has not been achieved;
- after the conversion of all convertible securities into shares, the bank fails to succeed a share capital increase at an amount at least equal to 10 per cent of the aggregate of the total nominal value of all securities and of the total amount of the share capital increase, within six months as of the conversion; or
- the bank is found by decision of the HFSF General Board Members in breach of its substantial obligations provided for in the restructuring plan; or

f as long as the HFSF is holder of the above ordinary shares or contingent convertible securities issued by the bank, the HFSF has the right to appoint a representative in the bank's board of directors; such representative has:

- the right to request the convention of a General Shareholders' Meeting or a BoD's meeting;
- a veto right to key corporate decisions of the bank's board relating to distribution of dividends; remuneration of the board's president, the managing director, board members, general officers and the deputies thereof; or to any other matter that may jeopardise the depositors' interests or have a material adverse effect on the liquidity, solvency or proper operation of the bank;

- the right to request the postponement of the bank's board meeting for three business days;
- the right to approve the bank's financial officer; and
- free access to the bank's books and records;

IV CONDUCT OF BUSINESS

The BoG Governor's Act 2501/2002, as in force, constitutes the basic legislative framework governing banks' conduct of business. This Act intends to ensure transparency in banking transactions and determines minimum information to be disclosed by banks in relation to deposits, lending, credit cards and other banking activities. In particular, as per this Act:

a a bank is obliged to provide its clients with transaction related information at a pre-contractual stage, in case the contractual terms are not negotiable on a case-by-case basis. Accordingly, the bank must:
- have available, at its branches, informative pamphlets with relevant information on basic products offered, as well as a billboard with the commissions on all services offered and a billboard with exchange rates and relevant commission and expenses;
- announce through the press the basic rates offered for euro deposits and loans denominated in euros;
- notify its clients of all contractual terms and provide them with an exact copy of the agreement; and
- provide its clients with supporting documents for each transaction, as well as a breakdown (interest, commission fees, one-off charge, other expenses, taxes and duties) of the payments that the customers need to make in order to meet their obligations;

b a bank is obliged to additionally inform its clients throughout the contractual relationship. More specifically, the bank will:
- inform the client at least quarterly, if the client has a deposit account held with the bank[19] or a loan account; if the client has investments on listed securities, information must be provided on a monthly basis;
- inform the obligor and the guarantor in case of overdue payment of the obligor, within 30 days from the payment becoming overdue;
- provide information to the client upon request, within 90 days from the date of request; and
- notify any unilateral changes to the contractual terms (to the extent permitted); notification should be made in advance on an individual basis, granting a minimum 30-day period for clients to accept the amended terms

19 In the event of no account movement, notification may be made semi-annually, subject to Law 3862/2010 implementing the Payment Services Directive 2007/64/EC.

or to terminate the contract;[20] any unilateral change to the contractual terms by the bank is allowed provided that such change is dictated by specific and reasonable criteria predetermined in the contract;

c banking contracts should include an analytical description of expenses charged to the client and justification thereof. Charging of expenses in general is subject to the criteria of justification and reasonability. As a general rule, the charging of commissions with respect to loans is not permitted, save for certain exceptions; in any case, *pro rata* determination of charges and expenses is explicitly prohibited; and

d the bank is obliged to have a complaints unit to handle clients' complaints and is required to reply to clients' complaints within 45 days.

In the case of consumers, Greek consumer protection laws should also be taken into consideration. Law 2251/994, as in force, (the Consumer Law) is the core law for consumer protection in Greece. The Consumer Law, *inter alia*, regulates general terms and conditions of consumer contracts, unfair contract terms, product liability, distance selling, doorstep selling, distance marketing of consumer financial services, misleading and comparative advertising and unfair business-to-consumer commercial practices. Further, attention should be drawn to:

a Ministerial Decision Z1-699/23.6.2010 implementing Directive 2008/48/EC on credit agreements for consumers; and

b Law 3862/2010 implementing the Payment Services Directive.[21]

Banks' civil liability is governed by the general provisions of the Greek Civil Code on contractual and tort liability. In the event of rendering of banking services to consumers, banks' tort liability for damages and moral suffering may also be grounded on specific provisions of Article 8 of the Consumer Law.

In terms of criminal liability, apart from criminal liability that may arise from the violation of banking secrecy with respect to deposits, there is no other specific criminal provision concerning banks' conduct of business. Therefore, banks' criminal liability in general is governed by the Greek Criminal Code, as well as by special criminal laws not related solely to banking business.

From a regulatory perspective, Article 55A of the BoG Statute entitles the BoG to impose administrative sanctions to banks that are subject to its supervision, as well as their legal representatives and managers, in cases where banks fail to comply with legislative or regulatory provisions governing the pursuit of their activities, or concerning the obstruction of the control by the BoG provided for by law. Such administration sanctions may be in the form of a non-remunerated deposit with the BoG for a specific term up to one year, or in the form of fines in favour of the Greek state. Moreover, Article 8 of the Banking Law lists certain instances upon the occurrence of which the BoG may

20 Notwithstanding relevant provisions of Law 3862/2010 implementing the Payment Services Directive 2007/64/EC.

21 2007/64/EC.

revoke a banking licence. Such cases include violation by a bank of laws or BoG decisions relating to supervision or to the pursuit of banking business, to an extent that such violation may jeopardise its solvency, or supervision by the BoG. Further, in case a bank breaches consumer protection laws, it may be subject to fines by ministerial decision.

Finally, in relation to banking confidentiality, all information, data and transactions pertaining to a client's banking relationship are of confidential nature. These confidentiality obligations of general application derive from the general duties of loyalty and confidentiality that each bank owes to its clients. Thus, secrecy restrictions arising from this general duty of confidentiality may be waived with the client's consent or approval. While there are no specific rules that define such general duties of confidentiality on any banking transaction, deposits of any kind (i.e., both cash and securities deposits) enjoy a higher degree of protection. For the latter, Greek legislation has followed a stricter approach, prohibiting the disclosure of deposit-related information in any manner, by threatening criminal sanctions in case of violation. More specifically, Law Decree 1059/1971 provides that banks operating in Greece, including Greek branches of offshore banks, are not permitted to disclose to third parties any information related to deposits of any kind held with them. This prohibition applies, even if the holders of the respective deposits have given their consent. Banking secrecy on deposits is imposed primarily over the persons who have access to clients' deposits when performing their services or assignments. The banking secrecy on deposits does not apply towards the BoG, solely for the purpose of exercising its competencies related to banks' supervision and to the implementation of monetary, financial and foreign currency rules; further, the banking secrecy is lifted in cases explicitly provided for in the law (e.g., tax evasion).

V FUNDING

Historically, the principal sources of funds were clients' deposits, interbank lending, the European Central Bank (ECB), as well as long-term capital markets investors. As already mentioned in the introduction of this chapter, the current fiscal crisis has caused severe liquidity problems to Greek banks and has gradually affected all traditional sources of funds. Owing to the Greek sovereign debt crisis, Greek banks' access to traditional sources of liquidity has been restricted. Under these circumstances the ECB has facilitated Greek banks' access to funding, by suspending the rating requirement for collateral, thus accepting Greek bonds as collateral against lending.

In the absence of alternative sources of funds, most Greek banks have become dependent on state aid programmes. In particular, as already indicated above:

a capital support programmes under Law 3723/2008 in the following forms:
- bond loans issued by Greek banks that were guaranteed by the Hellenic Republic; such bonds were given as collateral to the ECB for lending; or
- share capital increases by Greek banks operating in the form of *sociétés anonymes*, through the issuance of non-transferable and non-negotiable preferential shares which are fully paid up by the Greek state;

b equity capital provided by HFSF under Law 3864/2010 in conjunction with Cabinet Act 38/2012, in case of a significant decline in capital reserves in the following forms:
- share capital increases by Greek banks, through the issuance of ordinary shares which are fully paid up by HFSF; or
- contingent convertible securities issued by Greek banks and fully covered by HFSF; and

c the BoG Governor's Act 2644/2011 requires banks to report to the BoG certain information with respect to their transactions in the interbank market, including interbank lending.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Significant holdings in Greek banks are regulated by specific provisions of the Banking Law,[22] which have transposed into Greek law the Acquisitions Directive[23] in relation to banks. More specifically, the Banking Law provides that every natural or legal person intending to acquire a holding, directly or indirectly (e.g., through a holding company), of at least 5 per cent in a Greek bank (such holding the 'qualifying holding' and such person the 'qualifying holder'), is obliged to give the BoG prior notification of such intention and of the percentage to be acquired. The form and the requirements are further specified in BoG Executive Committee Act No. 22/2013. The above obligation also applies where there is an increase on an existing qualifying holding resulting either in a holding reaching or exceeding the threshold limits of 10 per cent, 20 per cent, one-third or 50 per cent of the bank's total voting rights; or in such bank becoming a subsidiary of this qualifying holder. Further, in the event of the qualifying holder being a legal entity, it is obliged to disclose to the BoG the identity of its board members, its most senior officers, its shareholders holding at least 5 per cent or more of its share capital and, where appropriate, its beneficial owner.

Moreover, any natural person or legal entity intending to dispose its qualifying holding is obliged to notify the BoG accordingly, also reporting the percentage of the holding it intends to retain, prior to the intended disposal. The same obligation applies where there is a decrease of an existing qualifying holding resulting either in a qualifying holding falling under the threshold limits of 5 per cent, 10 per cent, 20 per cent, one-third or 50 per cent of the bank's total voting rights; or in such bank ceasing to be a subsidiary of this qualifying holder.

After receiving the above-mentioned notification, the BoG shall, within a specific time frame, either approve or reject the proposed acquisition or increase or decrease of a holding, taking into account certain factors that relate to the qualifying holder, such as his or her reputation, professional experience etc. The Banking Law does not require

22 Article 24, as substituted by Law 3862/2010.

23 2007/44/EC.

a detailed business plan in connection with an application for approval by the BoG of an acquisition; pursuant to Article 24, the BoG may by decision determine the list of information that is necessary for the assessment of the proposed acquisition, depending on the features of the acquirer, the acquirer's participation in the bank's management and the stake to be acquired; however, no such decision has been published up to date.

Last, banks are obliged to disclose to the BoG, by 15 July of each year, the identities of their shareholders with stakes exceeding 1 per cent of their share capital, as well as the percentages of their holding. Banks are further obliged to report to the BoG, within 10 business days, any acquisition or assignment of their share capital which increases or reduces the holding percentages over or under the above-mentioned threshold limits (5 per cent, 10 per cent, 20 per cent, one-third, 50 per cent); and any change in the identity of their shareholders with a stake exceeding 1 per cent of their share capital and in any case the identity of their 10 major shareholders. It should be also highlighted that, for the purposes of efficient supervision, transparency and prevention of conflict of interests, the BoG may request from a bank information about the identity, financial situation and sources of income of the persons who, directly or indirectly or in coordination with other persons, hold a stake or voting rights exceeding 1 per cent of the bank's share capital and in any case of its 10 major shareholders.

ii Transfers of banking business

Greek law does not provide for any process (statutory, regulatory or judicial) for the transfer of all or part of a bank's business, without the consent of the customers concerned. Under Greek law, the transfer of banking business as a 'going concern' (i.e., the transfer of assets and liabilities comprising a separate banking business unit) may take place in the form of an asset deal (i.e., transfer of individual assets, claims and obligations or liabilities). In particular, the transfer of banking business takes place as follows:

a for the transfer of a claim (i.e., assignment), notice of the transfer to the obligor is sufficient; accordingly, the transfer of a bank's claims against its clients (e.g., arising from loan or credit agreements) is subject to relevant notice to them; and

b for the transfer of liabilities (i.e., novation or assumption), the creditor's consent is required; thus, the transfer of a bank's liabilities against its clients (e.g., deposits) is subject to client's consent.

Besides, Law 2515/1997 provides for preferential tax treatment of banking business transfer, as well as for simplified transfer procedures. If the acquirer is a Greek bank, the transfer is subject to prior approval by the BoG in the event the transfer would result in the acquirer's assets being increased by 10 per cent or more.

VII THE YEAR IN REVIEW

In general, 2013 was a year of limited legislative developments but of significant sector restructuring. The licenses of six credit institutions were revoked by the BoG and special liquidation procedures commenced. In particular, the transfer order scheme has been implemented with respect to two small Greek banks in the form of *sociétés anonymes* (Probank and FBB – First Business Bank) and to three Greek banks in the form of credit cooperatives; assets of these three credit cooperatives were transferred to Alpha Bank and those of Probank and FBB to NBG. Further, the bridge bank tool was used for the New Hellenic Postbank (which was formed out of the failed TT Hellenic Postbank) and later acquired by Eurobank. In particular, TT Hellenic Postbank was placed into special liquidation in January 2013 and all the deposits, branch network and the viable business operations were transferred to its bridge bank (New Hellenic Postbank), which had the HFSF as its sole shareholder, and was recapitalised in January 2013 and later sold to Eurobank in July 2013.

Further, a significant number of mergers and amalgamations took place in the Greek banking sector in 2013, including:

a absorption of Emporiki Bank by Alpha Bank after the transfer of Emporiki Bank shares from Credit agricole to Alpha Bank;

b absorption of New Proton Bank (a bridge bank formed out of the collapse of the failed Proton Bank in 2011) and of New Hellenic Postbank by Eurobank;

c absorption of Millennium Bank by Piraeus Bank; and

d acquisition of assets of the Greek branches of the Cypriot banks (Cyprus Popular Bank, Bank of Cyprus and Hellenic Bank) by Piraeus Bank.

In February 2013, NBG made a public offer for the acquisition of Eurobank suggesting an exchange of 100 Eurobank shares for 58 NBG shares. The HFSF gave its consent to the transaction, but the BoG prohibited the two financial institutions from merging before their recapitalisation process was completed. In this context it should be noted that banks' recapitalisation is one of the major points in the memorandum of understanding signed in December 2012 between Greece and the EC, the IMF and the ECB. NBG and Eurobank initially suspended their talks until the recapitalisation process was over, but later, in June, it was made public that the merger plans had been shelved. Eurobank did not eventually meet the recapitalisation requirements and full control thereof passed to the HFSF, with the latter now holding around 98 per cent of the Eurobank's equity and having appointed new management.

Piraeus Bank acquired the Greek subsidiary of BCP Banco Comercial Português (Millenium Bank) after the latter had been recapitalised by its parent institution. Piraeus Bank was again the preferred investor for the Greek arm of the Cypriot banking operations, following relevant negotiations and a bid assessment process initiated by the HFSF. The process started after an announcement at the Eurogroup meeting of 16 March 2013, and the HFSF invited Greek banks to make their offers on the transfer of Cypriot banking operations in Greece. Given the seriousness of the situation as it developed in Cyprus, the HFSF – at an extremely fast pace – approved Piraeus Bank's offer on the 22 March.

VIII OUTLOOK AND CONCLUSIONS

In the near future, some important decisions are due to be made and will be mostly concluded at political level; the major issue is the agreement of a third financing package by the EC, the IMF and the ECB, or the termination of the programme and Greece's return to the global markets. There are ardent advocates of both options; irrespective of which choice is eventually made, it will definitely have an important effect on the Greek economy. Nevertheless, there are tentative signs that the recession is finally easing and the economy may soon return to growth. According to the BoG, the twin deficit was replaced by a twin surplus, confidence in the economy reached a five-year high and the capital flight to banking institutions abroad has significantly reduced.

For the time being, the Greek banking sector relies heavily on state aid as the HFSF is the majority shareholder of the four pillar banks, holding the entire share capital of one of them (Eurobank). The results of the latest stress tests by the BoG came out early in March 2014; based on these, the regulator ordered a second round of recapitalisation setting a deadline of mid-April 2014 for the banks to hand in their plans on covering their shortfalls. The exact amount of extra capital needed is a cause for conflict between the BoG and the IMF, the ECB and the EC. In October 2014, the Greek banks, along with the rest of the eurozone credit institutions, will be subject to further review by the ECB. It is expected that reshuffling in the banking industry will continue but is unlikely to bring any far-reaching effects. Developments at European and global level are always crucial to the local economy as the Greek financial system remains fragile and with little resilience to sudden changes.

Appendix 1

ABOUT THE AUTHORS

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Dimitris Passas is a lawyer admitted to practise in Athens (Supreme Court), and managing partner at Moratis Passas Law Firm in Athens. He is currently the partner in charge of the working group specialising in banking, investment and financial law. In this capacity, he is regularly involved in the provision of legal advice in banking and capital markets, regulatory matters as well as in the structuring of financial transactions, such as securitisation, covered bonds and debt restructuring. Mr Passas also has extensive litigation practice focused on credit recovery, class actions and commercial disputes.

He holds a degree in law from the National and Kapodistrian University of Athens. He has also been acting as independent non-executive member of the board of credit institutions. He has been actively participating in the board of AEDBF Greece.

VASSILIS SALIARIS

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Vassilis Saliaris is a lawyer admitted to practise in Athens (Supreme Court), and senior associate of Moratis Passas Law Firm in Athens. As a member of the firm's banking and financial law working group, he advises on banking regulatory matters and has been involved in securitisation and covered bond programmes, as well as in the licensing of financial institutions from the local regulator. His practice areas include banking and finance, securitisation, consumer finance, insurance, insolvency and competition and antitrust law matters.

He holds a degree in law from the National and Kapodistrian University of Athens and an LLM from the Eberhard Karls University of Tübingen (Germany).

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