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Greek banking market – Recent regulatory developments and market trends

KYRIAKIDES GEORGOPOULOS LAW FIRM



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Konstantinos Vouterakos is a Senior Partner and head of the Banking, Finance & Capital Markets Group of the firm.

He is acting for major Greek and international clients, such as banks, payment institutions, issuers, service providers, large corporates, investors and international institutions on complex and innovative transactions and projects, advisory work as well as filings and representation before public and regulatory authorities.

Through his carrier, he participated in law-making committees as an expert on his practice. He is a regular speaker in conferences and events and contributes occasionally to legal publications.

He is a member of the Athens Bar (1989) and read law in Athens and London (LSE).

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BIO

Theodore Rakintzis is a Partner of the firm with significant expertise on Banking, Finance & Capital Markets, M&A and Real Estate.

During the last decade, he worked as a lead partner in breakthrough transactions with transnational elements and has also advised international and domestic groups in high profile restructurings as well as IPOs, rights issues and take over bids.

Theodore is also a member of KG's Private Wealth Structuring Practice Group having long established experience in advising family offices and individuals on various private law aspects, such as inheritance and succession planning, wealth structuring, asset transfer and asset protection and establishment of trusts and is further involved in many art-related projects. He is a member of the Athens Bar (2001) and read law in Athens and Cambridge (University of Cambridge).



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BIO

Athanasios Misirlis is an Associate of the Banking, Finance & Capital Markets Group of the firm.

His field of work ranges from Corporate to Banking and Payment Institutions Law. Over the years, he has worked in various projects ranging from regulatory Banking and payment institutions matters to M&As concerning listed companies and non-listed companies for various international clients.

Athanasios is a member of the Athens Bar since 2018 and of the New York Bar since 2019. He studied law at the Democritus University of Thrace and earned his LL.M. at the New York University Law School.

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Greek Banking Market – Recent Regulatory Developments and Market Trends



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Introduction

In the wake of the 2009 Greek fiscal crisis the strengths of the Greek banking system were severely tested, while during the following decade the banking system faced abrupt consolidation and recapitalisation through EU funding. The Hellenic Financial Stability Fund (HFSF) was established for this purpose and became the major shareholder in all four systemic banks resulting from such consolidation



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phase (Alpha Bank, National Bank of Greece, Eurobank and Piraeus Bank). In parallel, the Greek banks had to deal with the mounting stocks of non-performing loans (NPLs), reaching their historical height in March 2016 (€90.3 bn).

Nonetheless, since 2019 the country started to turn page

and the first signs of return to the pre-crisis normality is being noted supported by the impressive improvement of the fundamental macroeconomic indices of the Greek economy. According to the Annual Report of the Governor of the Bank of Greece, the NPL ratio to total loans reached at the end of 2021 its historic lower position since the beginning of the fiscal crisis (12.8%), albeit higher to the European average of 2.1%, continuing its further de-escalation due to the effective management of the stocks by the systemic banks and the continuing growth of the Greek economy despite the Covid-19 pandemic and the geopolitical challenges Europe (and the globe) continues to face in 2022 and further.

During the crisis period, the HFSF, through its participation in the governance and management of the Greek systemic banks, played a key role to the stabilization of the Greek banking system. Now HFSF's objective is to progressively implement the divestment phase in order for the Greek systemic banks to fully return to the private sector. Currently, HFSF has significantly reduced its interests held in the systemic banks and the banking landscape starts changing

with new entries. The country is one step away to regaining its investment grade, which is highly probable to occur by the end of this year following the general elections anticipated to take place within the first half of 2023.

In terms of regulation and supervision, Greece follows consistently European rules and trends, a fact that contributes even more to the stability of the overall system.

It should be noted though that in addition to the regulatory changes taking place in the banking sector, the Greek banks have started adapting to the digital era challenges and the competition that they are facing from international fintech companies by adopting many initiatives such as electronic platforms and mobile applications through which clients can apply for loans or just manage their bank accounts, e-wallets as well as establishing i-shops, which provide all banking services that conventional shops offer, but without the physical presence of employees.

Further to the digital transformation, Greek banks are also embracing the Environmental, Social and Governance (ESG) criteria for the provision of financing to corporate and non-corporate clients. Several systemic banks have already participated in the issuance of 'green' bonds, and in general support projects that promote the environmental footprint of Greece. Moreover, as part of the ESG initiative most of Greek banks have incorporated environmental and climate factors in their strategy and their operational framework, in order to comply with their new regulatory obligations.

Most importantly, Greek banks have now been able to focus in resuming and expanding their credit role offering in many instances significantly competitive financing terms compared to international banks, thus contributing in the turnaround of the economy.

For illustration purposes, we have compiled below selective information on recent developments regarding regulation of the Greek banking sector.

Recent regulatory developments

a) Whistleblowing Law (Greek Law 4990/2022)

Among the most significant regulatory developments in 2022, is the enactment of Greek Law 4990/2022 on the protection of persons who report breaches of Union law, transposing Directive (EU) 2019/1937 (the 'Whistleblowing Directive') into Greek law. Although taking place one year later than what the Whistleblowing Directive provided, the enactment of Greek law 4990/2022 is a welcome step towards the harmonisation of the Union law on whistleblowing, that will also safeguard the public interest and uphold fundamental rights, such as freedom of expression, the right to fair and just working conditions, and the protection of personal data. The objective of the above Law is the establishment of an internal and external reporting system for violations of the European Union law, while also providing protection to reporting persons through the imposition of stricter controls and sanctions.

It is estimated that the importance of the Greek Law 4990/2022 will be paramount for the operation of the banking and financial sector, since it also applies to breaches of the Union law on financial services, products and markets, and prevention of money laundering and terrorist financing are specifically within the scope of the law. More specifically, the above Law applies to any reporting persons (including self-employed persons, shareholders and persons belonging to the administrative, management or supervisory body of an undertaking, volunteers, paid or unpaid trainees, any persons working under the supervision and direction of contractors, subcontractors and suppliers, individuals whose employment agreement has ended, candidate employees as well as intermediators and third persons who are connected with the reporting persons and who could suffer retaliation in a work related context), working in either the public or private sector, that have become aware of potential breaches in a work-related context, and who have reasonable grounds to believe that the matters reported by them were true at the time of reporting.

To enable the above internal reporting, companies shall set in place internal reporting channels, and companies that have 50 or over employees shall also designate an Officer who will be responsible for receiving and monitoring the reports. As far as the external reporting is concerned, reporting persons shall approach the National Transparency Authority (in Greek "E.A.D."), who will be responsible for the handling of such reports.

In order to enforce the provisions of Greek Law 4990/2022, the latter ensures the protection of the whistleblowers against any form of retaliation and provides for the imposition of sanctions for persons who (a) obstruct or attempt to obstruct reporting, (b) retaliate or bring vexatious proceedings against reporting persons, and

(c) infringe the obligation to maintain the confidentiality of the identity of whistleblowers, persons concerned and any other person mentioned in a report. Sanctions can take the form of criminal enforcement or monetary fines. Accordingly, the above Law provides for criminal and monetary sanctions to whistleblowers that knowingly report or publicly disclose false information.

b) Rules for facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences (Greek Law 4920/2022)

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It is estimated that the importance of the Greek Law 4990/2022 will be paramount for the operation of the banking and financing sector.

Part B (arts 34-55) of Greek Law 4920/2022 transposed Directive (EU) 2019/1153 on laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. Transposition of the above Directive will enhance the ability of designated Member States' authorities competent for the prevention, detection, investigation or prosecution of criminal offences to have direct access to information held in centralised bank account registries. It also lays down measures to facilitate access to law enforcement information by Financial Intelligence Units for the prevention and combating of money laundering, associate predicate offences and terrorist financing and measures to facilitate cooperation between Financial Intelligence Units and Europol.

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The segregation of the cover assets from the rest of the assets is achieved from a legal point of view by the creation of a pledge over the cover assets.

The Law provides the right to several Greek authorities to have access to bank account and other financial information through the Registry System of Bank and Payment Accounts. Furthermore, in order to ensure the confidentiality and the safety of the bank account information that is shared through

the system, the above Law provides for several qualifications for the persons that may have access to such information. It should be underlined though, that such access is granted subject to the provisions applicable for the lifting of banking secrecy rules, which continue to apply.

Greek Law 4920/2022 establishes also an information disclosure mechanism with the corresponding authorities of other EU Member countries and provides for the cooperation of the Greek authorities with Europol. It remains to be seen how the new provisions will affect in practice the way criminal investigations are conducted within the EU, but it is for sure an important development impacting on the operational aspects of the AML regime.

c) Covered Bonds (Greek Law 4920/2022)

Part A (arts 1-33) of Greek Law 4920/2022 transposed into the Greek legislation Directive (EU) 2019/2162 on the issue of covered bonds and their regulatory supervision. This Law replaces the previous regime introduced in 2014 aiming to set a clearer legal framework for the issuance and supervision of covered bonds in order to ensure a high-level protection for the investors and adopt a solid framework for a financing and re-financing option used widely by all four Greek systemic banks.

Covered bonds are debt instruments, in the form of bond loans, issued by credit institutions as defined in the Regulation 575/2013 upon prior authorisation by the Central Bank of Greece ("BoG").

Covered bonds and the financial obligations deriving therefrom shall be at any time secured by high quality assets including indicatively public sector debt securities, loans secured by residential or commercial immovable property. Pursuant to the "nominal principle", upon assessment of the value of the required coverage by independent appraisers, the aggregate principal amount of all cover assets should be ensured to exceed at least by 5% the aggregate principal amount of outstanding covered bonds, unless the BoG determines otherwise.

The cover assets constitute a separate group of assets, distinctive from the other assets of the issuer, a fact that is important especially in cases of commencement of insolvency proceedings. Pursuant to the "dual recourse principal", in case the priority claim related to or arising from the covered bond cannot be fully satisfied, bond investors shall have a claim against the rest of the insolvency estate of the issuer, which ranks *pari passu* with the claims of the issuer's ordinary unsecured creditors.

The segregation of the cover assets from the rest of the assets is achieved from a legal point of view by the creation of a pledge over the cover assets. The cover assets may be replaced by other assets of an equal value or new assets may be added to the cover assets, a fact which demonstrates the dynamic nature of the cover and that it is in fact a form of floating security.

d) EBA Guidelines of the Limited Network Exception (BoG Executive Committee Act 214/12.12.2022)

Another worth noted recent regulatory development is the issuance of BoG Executive Committee Act 214/12.12.2022 (the Act), which transposed into the Greek legal framework the European Banking Association (EBA) Guidelines on the limited network exclusion (LNE) under PSD2 (EBA/GL/2022/02). Since the enactment of PSD2, the application and implementation of the LNE has been significantly diverging in the EU member countries, impeding the single EU market for payment services and allowing regulatory arbitrage opportunities. Furthermore, entities trying to make use of the LNE were not able to ensure a uniform approach to their payment instruments, since some regulatory authorities granted the relevant exceptions, while others did not. Moreover, consumers making use of excluded payment instruments were not aware that they did not benefit from the PSD2 provisions.

Thus, the EBA arrived at the view that it should issue guidelines aiming at harmonising various of aspects in relation to the application of the LNE. These include, inter alia, the use of payment instruments within a limited network, the criteria and indicators to qualify a limited network of service providers or a limited range of goods and services as such, the application of the LNE by regulated entities, and the notification requirements. Accordingly, the BoG is now responsible for reviewing and deciding on whether to grant the LNE to the applying entities. It is worth mentioning that the BoG has already provided two LNEs before the formal issuance of the above Act.

According to Greek Law 4537/2018 and the above Act, issuers of payment instruments under the LNE shall submit a notification to the BoG, if, in any 12-month period, the total value of payment transactions executed exceeds €1,000,000. The Act further specifies the content of the notification and the assessment rules for the quantitative criterion.

The BoG maintains on its website a public register disclosing the name of the entity that has received the LNE and a summary of the services performed.

Market prospectives

New landscape: In terms of market players the four systemic banks together with the *quasi* systemic Attica Bank continue playing a central role while new significant entries are noted (Optima bank, Pancreta Bank, Vivabank). In parallel, new players have emerged in the adjacent field of financing, payment institutions and fintech providers. The HFSF has already reduced its holdings in the systemic banks with the exception of National Bank of Greece where it still retains a robust 40.39%. HFSF's ongoing divestment plan aims at achieving full exit by 2025 from the systemic circle. The lower interests held in Eurobank, Alpha Bank and Bank Piraeus resulted through capital increases of developmental nature (as opposed to recapitalisations up until 2015), which permitted the banks to further diversify their shareholder base and secure strong capital ratios for the coming years.

Further in response to structural market changes, the banks proceeded in hive-down processes to separate the core banking assets and activities from the holding vehicle retaining residual activities and assets. Such moves were necessary to provide operational flexibility to the banking groups and make them more attractive targets for investors on the stock exchange.

Steps towards innovation: With the increasing importance of technology in banking business and due to pressures from competitive fintech and payment service market players, systemic banks have entered into complex innovative deals (joint ventures and long-term outsourcing arrangements) with strategic partners in the fields of merchant acquiring, card management and related payment businesses. Along with providing capital benefits and cost efficiencies, such transactions primarily aimed at addressing new market needs and providing know-how and solutions with the support of global players such as EVO/Global Payments, NEXI, Worldline and others.

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The turn of the Greek market towards innovation is further evidenced by the establishment of a program called "Regulatory Sandbox" run by the BoG. The aim of the program is to provide entities that have been authorised by the latter with a controlled environment to test their innovative financial propositions for a specified period . Participants will have the opportunity to test their innovative products and services in mini-scale and in a safe environment, in alignment with the supervising authority, and ensure their functionality, before launching them in a broader market. Soon the BoG intends to expand the program to unauthorised entities.

NPLs: Following the significant clean-up of the banks' balance sheets from NPL exposures , the first examples of restructured loan portfolios returning to the banking system are observed. This is a reverse process signifying a return to a long awaited normality. The first example is the recent acquisition by Optima bank of a portfolio of performing loans in the secondary market (from the 2020 Galaxy securitisation).

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Bancassurance: Finally, as the diverse insurance sector is starting to consolidate to address market challenges, it is expected that there will be a consequential impact on the Greek bancassurance sector. Recent deals such as the sale of National Insurance by National Bank of Greece to CVC Capital, the acquisition of AXA Greece by Assicurazioni Generali and the acquisition of European Reliance by Allianz SE through a tender offer, are reshuffling the cards in the market and bound to shape a new landscape in the related bancassurance sector.



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