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CONTENTS

Belgium Cédric Alter, Dominique Blommaert and Stine Delaey *Janson Baugniet* 3

Brazil Fernanda Levy, Tiago Cortez and Ricardo Higashitani *KLA – Koury Lopes Advogados* 8

Canada Blair W Keefe and Eli Monas *Torys LLP* 14

Colombia Mariana Posse and Pablo De La Torre *Posse, Herrera & Ruiz* 19

Croatia Luka Rimac and Marko Komljenović *Mamić Perić Reberski Rimac Law Firm LLC* 26

France Pierre Casanova *Darrois Villey Maillot Brochier* 33

Germany Oliver Glück, Robert Kramer, Daniela Eschenlohr, Sebastian Wintzer and Timo Patrick Bernau *GSK Stockmann + Kollegen* 41

Greece Basil C Scouteris *Andreas Lionis & Associates* 49

Hungary Zoltán Varga and Olga Péter-Szabó *Nagy és Trócsányi* 54

Indonesia Susandarini and Eko Prasetio *Susandarini & Partners in association with Norton Rose Australia* 62

Italy Marcello Gioscia, Gianluigi Matteo Pugliese and Benedetto Colosimo *Ughi e Nunziante – Studio Legale* 67

Japan Yoshiyasu Yamaguchi, Hikaru Kaieda, Yoshikazu Noma, Tae Ogita and Ken Omura *TMI Associates* 74

Korea Kye Sung Chung, Sang Hwan Lee and Kyoung-ah Grace Nam *Kim & Chang* 80

Luxembourg Michel Molitor and Olivier Gaston-Braud *Molitor Avocats à la Cour* 87

Netherlands Bart P M Joosen *FMLA Financial Markets Lawyers* 95

Norway Tore Mydske, Sverre Tyrhaug and Camilla Wasserfall *Advokatfirmaet Thommessen AS* 102

Panama Franklin Briceño Salazar, María Luisa Fábrega and Dayra Hidalgo *Sucre, Briceño & Co* 108

Peru Juan Luis Avendaño C and Mauricio Balbi *Miranda & Amado Abogados* 114

Philippines Rafael A Morales *SyCip Salazar Hernandez & Gatmaitan* 121

Romania Laura Toncescu *D&B David si Baias* 125

South Africa Ina Meiring *Werksmans Attorneys* 132

Switzerland Patrick Hünerwadel, Shelby R du Pasquier, Marcel Tranchet and Valérie Menoud *Lenz & Staehelin* 137

Tanzania Charles R B Rwechungura and Kamanga W Kapinga *CRB Africa Legal* 145

Turkey A Cem Davutoğlu *Davutoglu Attorneys at Law* 149

United Arab Emirates Bashir Ahmed *Afridi & Angell* 154

United Kingdom Tolek Petch *Slaughter and May* 159

United States Richard K Kim *Wachtell, Lipton, Rosen & Katz* 170

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Regulatory framework

1 What are the principal governmental and regulatory policies that govern the banking sector?

The governmental and regulatory policies relating to the banking sector aim primarily to:
- enhance the stability and effectiveness of the banking system;
- ensure transparency of the procedures and terms of transactions carried out by credit institutions;
- prevent and suppress money laundering; and, in light of the current economic conditions,
- strengthen public confidence in the domestic banking sector and prevent systemic risks.

2 Please summarise the primary statutes and regulations that govern the banking industry.

Law 3601/2007 (the Banking Law) on the 'Taking up and pursuit of business by credit institutions, capital adequacy of investment firms and credit institutions and other provisions', as recently amended by Law 4021/2011 on 'Enhanced measures for the supervision and resolution of credit institutions, regulation of credit issues, ratification of the framework contract of the European Financial Stability Facility and the amendment thereof and other provisions' and by Law 4051/2012 on 'Urgent provisions in relation to pension matters and to the implementation of the Memorandum of Understanding of Law 4046/2012', constitutes the core of the legislative framework on the banking industry.

The Banking Law (as currently in force), which was adopted to transpose to Greek banking legislation the provisions of EC Directives 2006/48 and 2006/49/EC, lays down rules concerning both the taking up and pursuit of the business of credit institutions (operating in the form of a *société anonyme* or in the form of a pure credit cooperative) and the application of preventive supervisory and resolution measures and the placing of credit institutions under special liquidation. The bank supervision regime is further elaborated by the Bank of Greece (BoG) Governor's Acts, which, inter alia, cover:
- the data and information that must be submitted by supervised institutions to the BoG on a periodical basis (BoG Governor's Act 2651/2012);
- the preparation and submission of recovery plans (BoG Governor's Act 2648/2012);
- the definition of own funds (BoG Governor's Act 2630/2010);
- the calculation of minimum capital requirements (BoG Governor's Acts 2646/2011 and 2631/2010);
- the supervision and control of credit institutions' large financial exposures (BoG Governor's Act 2635/2010);
- the evaluation of the organisation and internal control systems of credit and financial institutions (BoG Governor's Act 2577/2006); and
- the credit institutions' disclosure requirements to retail customers with respect to terms and conditions governing the provision of bank services (BoG Governor's Act 2501/2002).

Of paramount importance in relation to prudential supervision of credit institutions and the sanctions that the BoG may impose upon them in performing its supervisory tasks, are, furthermore, the relevant provisions contained in the BoG statute. It is to be noted, in this respect, that the provisions of the BoG statute have the force of law and, more specifically, the force of a superior law prevailing over any other provision of domestic law, given that said statute forms part of an international agreement which was ratified by law (see article 28, paragraph 1 of the Greek Constitution).

A number of separate enactments can, finally, also be considered as an integral part of the legislative framework that governs the banking industry, namely (and indicatively): Law 3691/2008 on the 'Prevention and suppression of money laundering and terrorist financing', Law 3606/2007 on 'Markets for financial instruments and other transactions', as well as various laws and legislative decrees on the wide spectrum of transactions between banks and their customers (Law 5638/1932 on joint accounts, Law 1665/1986 on leasing, Law 1905/1990 on factoring, etc).

3 Which regulatory authorities are primarily responsible for overseeing banks?

The BoG is responsible for the licensing and exercise of prudential supervision over credit institutions and for the enforcement of the applicable regulations. It is also responsible for the imposition or recommendation of resolution measures, as well as the revocation of a bank's operating licence.

4 Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

According to the provisions of article 6 of Law 3714/2008, deposits are insured up to the amount of €100,000. The insurance is provided by the Hellenic Deposit and Investment Guarantee Fund (HDIGF). HDIGF is a private law entity supervised by the minister of finance, to which all credit institutions licensed by the BoG become compulsory members and pay annual contributions (Law 3746/2009, as currently in force).

The aforementioned coverage includes any interest accrued up to the date on which the deposits become unavailable and applies for the aggregate deposits of each depositor held by the same credit institution, irrespective of the number of accounts (personal or joint), the currency of denomination or the country where the branch of the credit institution with which the deposit is held operates. In the case of joint accounts opened in the names of two or more persons, each depositor's share is deemed a separate deposit and is covered up to €100,000. In calculating the amount of compensation payable to depositors, the credit balance on their accounts is set off against any counterclaims filed by the credit institution against the beneficiary-depositor, as per the terms of articles of 440ff of the Greek Civil Code (eg, loans outstanding, credit card dues).

The types of deposits that are excluded from coverage through the HDIGF are listed in article 11 of Law 3746/2009. These include, indicatively:

- deposits held by other credit institutions in their own name and for their own account;
- all instruments falling within the category of credit institutions' 'own funds', as defined in the BoG Governor's Act;
- deposits arising from customer transactions in connection with which there has been a criminal conviction for money laundering or the funding of terrorism, as defined in Greek legislation or the corresponding legislative framework of other countries; and
- deposits by shareholders whose direct or indirect participation in the capital of the credit institution concerned amounts to at least 5 per cent of the share capital or voting rights, as well as deposits by individuals who are responsible for the audit of the credit institution's financial statements, as provided for by law.

In relation to further governmental intervention in the banking sector, see question 7.

5 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

As a general rule, the provision of credit and guarantees by a company to its parent entity or to individuals that exercise control over it is prohibited. However, because banks engage in these activities in the ordinary course of their business, in principle, the Banking Law allows such transactions to take place insofar as they are not carried out under preferential terms compared with those generally applied by the credit institution or in a manner that may operate to the detriment of the credit institution's prudent and sound management.

An affiliate relationship between two companies exists, according to article 42e(5)(a) of Codified Law 2190/1920 (as currently in force), when the one:

- holds the majority of capital or voting rights in the other;
- controls the majority of voting rights in the other by means of shareholders' agreements;
- participates in the capital of the other and has the right to appoint or terminate the majority of the members of the board of the other;
- has the authority to exercise de facto control over the other; or
- is jointly with the other controlled by a third company (parent company).

It is to be noted that the Banking Law's definition of 'control' is, precisely, that of 'a relationship between a parent undertaking and a subsidiary, as defined in article 42e(5)(a) of Codified Law 2190/1920, as currently in force, or any similar relationship between any natural or legal person and an undertaking' (article 2(12)).

As regards the positive obligations of persons subject to supervision on a consolidated or sub-consolidated basis, article 38 of the Banking Law stipulates that credit institutions must have adequate risk-management processes and internal control mechanisms in place in order to identify, measure, monitor and control transactions with their parent holding company and its subsidiaries, and must report to the BoG any significant transaction with the aforementioned companies in addition to their large exposures.

6 What are the principal regulatory challenges facing the banking industry?

The principal regulatory challenges facing the banking industry relate, on the one hand, to the implementation of the new Basel III Accord, which addresses issues such as building high-quality capital, strengthening risk coverage, mitigating pro-cyclicality, discouraging leverage as well as strengthening liquidity risk requirements and forward-looking provisioning for credit losses, and, on the other hand, to the necessary adjustment of the existing regulatory framework to what can arguably be considered a widespread or systemic crisis, as the existing arrangements are primarily designed to support failing institutions within an otherwise functioning environment.

7 How has regulation changed in response to the recent crisis in the banking industry?

The authorities have responded to the recent economic crisis through, inter alia, the adoption of two credit institution support schemes.

The first support scheme, set out in Law 3723/2008 (as amended and in force), is a package of measures consisting of a recapitalisation scheme, making new capital available to credit institutions in exchange for preferential shares so as to allow banks to strengthen their capital base against potential losses, a guarantee scheme, covering against remuneration new debt with a maturity between three months and three years, and a securities scheme, providing against remuneration government bonds to eligible credit institutions in order to enhance their access to liquidity, in particular with the ECB. The second scheme involves the recapitalisation of credit institutions in Greece by a new entity with a financial stability mandate, namely the Hellenic Financial Stability Fund (HFSF), as provided for in Law 3864/2010 (as amended and in force). On 6 February 2012, the European Commission authorised, under EU state aid rules, an extension of the two support schemes until 30 June 2012.

A second, equally important, change in banking regulation, brought about by the need to protect public confidence in the stability and smooth operation of the financial system and to prevent systemic risk, is the recent introduction and enactment of a bank resolution framework, alongside an enhanced supervisory regime, and the entrusting of the corresponding resolution authority to the BoG (Law 4021/2011). The first two instances of the framework's successful application (Proton Bank and T-Bank cases) underscore the significance of the BoG's new mandate.

In relation to further regulatory changes in response to the recent crisis, see 'Update and trends'.

8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?

As is true with all EU countries, the great majority of current and upcoming developments in the Greek banking regime is directly induced or at least strongly influenced by EU legislation and international developments. Legal and regulatory policy will, in addition, change in view of the current economic environment. Some of the short-term changes are outlined in the 'Update and trends' question, while medium and longer-term developments are essentially dependent on Greece's efforts to comply with its international obligations and return to a fiscally sustainable path.

Supervision

9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

The BoG exercises its supervisory authority mainly by means of regulation and by monitoring and assessing the financial statements and relevant data submitted by the supervised entities on a regular basis. In order to fulfil its supervisory task, the BoG also has the power to request written explanations on a case-by-case basis and to conduct on-site examinations.

The frequency of written explanation requests and on-site examinations is determined on an ad hoc basis, taking into account factors such as size, systemic importance, nature, scale and complexity of each credit institution's activities. The same factors also influence how extensive said actions and requests are.

10 How do the regulatory authorities enforce banking laws and regulations?

The principal enforcement instruments are:
- regulation on an individual basis (including, indicatively, the imposition of stricter than minimum capital adequacy requirements, limits on the distribution of profits, requirement for the adoption of corrective measures, appointment of a commissioner, etc);
- imposition of administrative sanctions (in the form of an obligation to maintain a non-interest-bearing deposit with the BoG, a fine in favour of the Greek state, etc); and
- withdrawal of a credit institution's licence.

11 What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The most common enforcement issues relate to statutory or regulatory violations in areas ranging from capital adequacy and internal control systems to anti-money laundering and disclosure requirements.

12 How has bank supervision changed in response to the recent crisis?

The recent economic turmoil has influenced bank supervisory activity on both the European and domestic level. The BoG has responded to the acute challenges in a timely manner by placing increased emphasis on crisis management, requiring increased capital buffers, overseeing the enhancement of internal control systems as well as, more recently, by making use of its enhanced supervisory (and resolution) tools, as provided for in Law 4021/2011 (see, for example, BoG Governor's Act 2648/2012 on the preparation and submission by credit institutions of recovery plans).

Capital requirements

13 Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

In order to be granted a banking licence, credit institutions established in the form of a *société anonyme* must hold capital resources (paid-up initial capital) equal to at least €18 million, whereas credit institutions established in the form of a credit cooperative must hold €6 million. Branches of a credit institution authorised in a third (non-EU) country must have paid-up initial capital amounting to at least €9 million. Initial capital must, in principle, be paid up in cash, although the BoG may decide on an individual basis which other forms of capital other than cash may be used.

Banks must, furthermore, in accordance with Basel II and the EU Capital Requirements Directives II and III, maintain own funds for the protection against various risks, including credit risk, market risk and operational risk. The methods for calculating capital requirements for credit, market and operational risk are currently set out in BoG Governor's Acts 2631/2010 and 2646/2011. What constitutes eligible own funds is set out in BoG Governor's Act 2630/2010.

Banks are currently not required to make contingent capital arrangements.

14 How are the capital adequacy guidelines enforced?

The capital adequacy guidelines are enforced through the ongoing supervision of the BoG and its related powers to enforce banking laws and regulations. For the purpose of compliance control, credit institutions are required to submit periodic capital adequacy reports (see BoG Governor's Act 2651/2012). The majority of the relevant reports are provided for on a quarterly basis.

15 What happens in the event that a bank becomes undercapitalised?

Should a credit institution find itself in a situation of non-compliance with the regulatory provisions on capital adequacy, it may, first of all, be subject to various preventive supervisory measures by the BoG. Indicatively, the BoG may require the credit institution in question to apply a specific, in terms of capital adequacy, provisioning policy or treatment of assets; to restrict or limit parts of its business activities; to reinforce own funds through net profits; to have certain transactions subject to prior authorisation by the BoG; and/or to take other appropriate corrective measures.

The BoG may, furthermore, in accordance with the provisions of article 63 of the Banking Law, decide to appoint a commissioner, who is under the obligation to assess the general financial, managerial and organisational condition of the credit institution and make the best possible efforts to ensure its smooth operation, with a view to either achieving its return to financial soundness or preparing it for any of the resolution measures under articles 63C-E or its placement under special liquidation under article 68. Depending on certain factors, the BoG-appointed commissioner either assists or assumes management of the credit institution.

Following the enactment of Law 4021/2011, the BoG may, finally, for the purpose of ensuring financial stability and strengthening public confidence in the domestic financial system, decide to adopt or implement resolution measures in relation to a particular credit institution. The resolution measures provided for are:
- capital increase (article 63C of the Banking Law);
- transfer of assets and liabilities to another credit institution or person (article 63D of the Banking Law); and
- setting-up of a transitional credit institution (article 63E of the Banking Law).

16 What are the legal and regulatory processes in the event that a bank becomes insolvent?

In the event that a bank becomes insolvent and there are no systemic risk considerations or implications, the BoG withdraws its licence and places it under special liquidation (article 68 of the Banking Law). During the said liquidation process, a special liquidator appointed and supervised by the BoG assumes the credit institution's management and the latter may, inter alia, not accept deposits. The terms of the application of article 68 of the Banking Law have recently been specified through BoG's Credit and Insurance Committee Decision 21/2/4.11.2011.

The provisions of the Bankruptcy Code (generic insolvency regime) are complementarily applicable, to the extent that they do not contradict the specific provisions of the Banking Law, as these are further elaborated by means of the abovementioned Credit and Insurance Committee Decision.

17 Have capital adequacy guidelines changed, or are they expected to change in the near future?

Capital adequacy guidelines have changed, in recent years, and are expected to change again in the near future both because of Basel III and the upcoming EU Capital Requirements Directive IV (expected to be adopted in mid-2012 with a view to implementation

Update and trends

The numerous challenges facing the Greek banking sector amidst the ongoing severe economic crisis as well as the set of measures aimed at addressing them are, to a great extent, laid out in the latest (March 2012) 'Memorandum of Understanding on Specific Economic Policy Conditionality' between the European Commission, Greece and the BoG (text finalised shortly before the end-February submission deadline for this country report), which forms part of the so-called second economic programme for Greece. Among the core provisions of the financial sector regulation and supervision section of the said Memorandum are those according to which:

- legislation will be enacted (prior to disbursement) to support the strategy for bank recapitalisation and resolution (this has been effectuated by the enactment of Law 4051/2012, which entered into effect on 29 February 2012);
- all banks will be required to achieve a core Tier I capital ratio set at 9 per cent by Q3-2012, reaching 10 per cent in Q2-2013;
- based on a comprehensive assessment of bank's capital needs undertaken by the BoG, banks will revise their business plans and submit capital-raising plans by Q1-2012;
- a strategic assessment of the banking sector, using a set of quantitative and qualitative criteria, will be carried out by the BoG and be complete by Q1-2012;
- based on an assessment of their viability and capital raising plans (by the end of April 2012), the BoG will communicate to banks specific deadlines to raise capital in the market (by Q3-2012);
- banks submitting viable capital-raising plans will be given the opportunity to apply for and receive public support in a manner that preserves private sector incentives to inject capital and thus minimises the burden for taxpayers. Specifically, banks will be able to access capital from the Hellenic Financial Stability Fund (HFSF) through common shares and contingent convertible bonds;
- banks that do not submit viable capital-raising plans and/or do not raise the capital needed to meet the regulatory requirements within the set deadlines will be resolved in an orderly manner and at the lowest cost to the state; and
- to ensure that the system remains well capitalised, by Q2-2013, the BoG will conduct a new stress-test exercise, based on end-2012 data, using a methodology determined in consultation with the Commission, ECB and IMF.

on 1 January 2013) and because of the ongoing developments on a national level (see 'Update and trends' section).

Ownership restrictions and implications

18 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

There are no legal and regulatory limitations regarding the type of entities and individuals that may own a controlling interest in a bank. What constitutes control for this purpose has been specified under question 5.

19 Are there any restrictions on foreign ownership of banks?

There are no restrictions on foreign ownerships of banks.

20 What are the legal and regulatory implications for entities that control banks?

It is, first, to be noted that most of the regulatory implications that apply to entities that control banks are also applicable in instances where an entity holds an interest that falls well below the threshold of control (as defined in question 5). More specifically, the BoG may (before authorisation is granted as well as at any time during the operation of the credit institution):

- request details on the identity, the financial situation and the source of funds of entities that hold directly or indirectly more than 1 per cent of the capital or voting rights of the credit institution or that are among the 10 largest shareholders of a bank;
- impose on the above-mentioned entities to have their voting shares registered; and
- require that specific percentages of the total of the registered voting shares referred to hereinabove be held by one or more natural persons who have been granted prior approval by the BoG.

As regards entities that exercise control over a credit institution, as defined under question 5, this might, additionally, trigger the consolidated supervision regime (see articles 33 to 40 of the Banking Law), if the controlling entity is a holding company whose subsidiaries are predominantly active in the financial sector.

21 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

Controlling entities or individuals are generally obliged to: (i) to honour their communication obligations to the BoG, as stipulated in article 24 of the Banking Law; (ii) provide assurance as to their ability to maintain the sound and prudent management of the bank and avoid situations resulting in conflicts of interests; and (iii) avoid raising doubts as to the legality of their sources of income.

22 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

The insolvency of a bank and its placing under special liquidation under article 68 of the Banking Law (see question 16), bears the consequence that the controlling entity or individual will, depending in part on the type of shares it holds, suffer a significant or total loss of its investment (as shareholders rank last in priority). There is, on the other hand, no legal obligation for the controlling entity or individual to offer capital to the insolvent entity and any such obligation would be of disputable constitutional validity.

Changes in control

23 Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

Any natural or legal person, acting alone or in the context of a common action (as defined in law), intending to acquire a holding that directly or indirectly corresponds to a percentage equal to, or higher than 10, 20, 33 or 50 per cent of the capital or the voting rights of a credit institution authorised in Greece must first inform the Bank of Greece, which has sixty working days from the notification of the proposed acquisition or increase of a holding to either approve or oppose it in a reasoned decision. To this end, the Bank of Greece may request the persons concerned to provide any necessary data and information at its discretion.

The same also applies when a prospective acquirer intends to individually increase a holding so that the proportion of the voting rights reaches or exceeds 5 per cent of total voting rights or when a natural or legal person acquires, directly or indirectly, the control of a credit institution (as defined under question 5).

Prior notification or approval might also be required by the Hellenic Competition Commission.

24 Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

A foreign acquirer will basically have to go through the same regulatory process.

25 What factors are considered by the relevant regulatory authorities in considering an acquisition of control of bank?

The BoG may disapprove of the acquisition of a substantial holding or of control of a credit institution, if it is not satisfied as to the suitability of the persons concerned, including the natural persons who directly or indirectly control the acquiring legal persons, for the prudent and sound management of the credit institution or if there are valid doubts as to the legality of their income.

26 Describe the required filings for an acquisition of control of a bank.

The BoG's policy is to extend its inquiry on the entity wishing to acquire a substantial holding or control of a credit institution down to the level of the natural persons who stand behind it. The documents to be provided are determined by the BoG on a case-by-case basis, although those pertaining to the good standing of the entity or individual and the criminal record of the individual will most certainly be required. Upon request of the acquiring entity or individual, the BoG will routinely grant an informal meeting in order to provide information regarding the required filings.

27 What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

The BoG must either approve or oppose a proposed acquisition or increase of a holding within sixty working days of the relevant notification. If the BoG does not oppose the plan, it may fix a maximum period for its implementation.

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