Management and transfer of non-performing loans (NPLs) and/or claims from performing loans in Greece under the new regulatory framework of Law 4354/2015 as amended by Laws 4389/2016 and 4393/2016

On 16.12.2015 the Greek Parliament passed Law 4354/2015 (Governmental Gazette Issue A’ 176/16.12.2015) on the “Management of non-performing loans, salary adjustments and other urgent matters for the implementation of the budgetary targets and structural reforms agreement”, which has since been amended by Laws 4389/2016 (Governmental Gazette Issue A’ 94/27.5.2016) and 4393/2016 (Governmental Gazette Issue A’ 106/6.6.2016). In this way a new legal framework for the management and transfer of claims from Non-Performing Loans (NPLs) is introduced into the Greek market, so as to help credit institutions clean up their balance sheets from non-performing, or so called “red”, loans. Although Law 4354/2015 initially provided for the management and/or transfer of performing loans also, provided that such performing loans were grouped together with NPLs of the same debtor, by virtue of the latest amendments performing loans can now independently be managed or transferred too.

In any case, the new legal framework (art. 3 par. 7) explicitly prohibits the deterioration of the debtor’s and the (potential) guarantor’s substantial status and procedural rights, in cases of management assignment or acquisition of claims regulated hereunder. The terms in the existing loan agreements, including interest rates, cannot be unilaterally amended by the companies regulated under L. 4354/2015. The new framework also takes into account the protection of consumer rights, especially in relation to required notifications to debtors for non-performing obligations (under Greek Law 3758/2009).

🔥 Which loans fall within the scope of the new legal framework?

Law 4354/2015 was initially applicable to claims from loans and credits that had been “non-performing” for a period exceeding ninety (90) days. However the latest amendments broadened the scope of the new legal framework so as to cover also claims arising from performing loans and credits. In this way the framework applies to claims arising from both performing and non-performing loans and credits, including loans guaranteed by the Greek State. The only loan category excluded from the new regime refers to loans granted by the Loans and Consignments Fund.
It is further noted that the new framework does not prejudice the application of the existing Greek banking law provisions and regulations, especially on bond loans and claims securitization.

Special exclusion: Until **31.12.2017**, art. 3 par. 8 L. 4354/2015 will not apply to loans secured by mortgage on a debtor’s primary residence of an objective tax value up to 140.000 Euro, meaning that these loans specifically may be the subject matter of management but not sale/transfer agreements.

**Which companies are eligible to undertake the management and acquisition of loans under the new legal framework?**

The new law introduces two new types of companies in the Greek legal system, in relation to the management and transfer of claims arising from loans and credits:

(a) Loans Management Companies (L.M.C.) and
(b) Loans Transfer Companies (L.T.C.).

**A. Basic characteristics of L.M.C.s under Law 4354/2015:**

- They are Greek companies under the legal form of Société Anonyme or companies established in any other EEA (European Economic Area) Member-state which operate in Greece through a branch
- The companies must have registered shares
- Their scope of activity must explicitly include the management of loans
- They must be granted a special operating license for the above purpose by the Bank of Greece, which also remains the sole competent monitoring authority exercising supervision throughout their active operating status. They are registered in the General Commercial Registry (G.E.MH.). Their license is published in the Governmental Gazette and the Bank of Greece maintains a fully updated list with all licensed companies on its official website.

**B. Basic characteristics of L.T.C.s under Law 4354/2015:**

- They are Greek companies under the legal form of Société Anonyme or companies established in any other EEA (European Economic Area) Member-state or companies domiciled in third countries, which may at their discretion operate in Greece through a branch, provided that they are not domiciled in countries with “favourable” tax regimes or “non-cooperating” according to Greek tax law 4172/2013
- Their scope of activity must explicitly include the acquisition of loans and credit
They are capable of loan/credit acquisitions only under the condition that they have signed a loan management agreement with a L.M.C properly licensed and supervised by the Bank of Greece. L.T.Cs themselves are not required to obtain any operating license from the Bank of Greece nor are they supervised thereby.

Which is the licensing procedure for the L.M.C.s subject to Law 4354/2015?

The Bank of Greece Executive Committee Act No 95/27.5.2016 was published in the Government Gazette Issue B’ No 1574/3.6.2016, replacing its previous Act No 82/8.3.2016, in order to specify the criteria, conditions and supporting documentation with respect to the licensing procedure for the establishment and operation of the companies legally formed as L.M.C.s:

Basic requirements for acquiring an operating license by the Bank of Greece, following relevant application

- Company’s Articles of Association & amendments thereof
- Data regarding the beneficial owners and the company’s directors and managers. The company reveals i) individuals holding, directly or indirectly, stake or voting rights equal to or more than 10% of the share capital (or the minimum defined by law each time, if it is different), ii) individuals, who exercise control over the company by virtue of written or other agreements or common action, iii) the members of the Board of Directors of the company, iv) the head of the critical functions of the company, as provided in Bank of Greece Governor’s Act No 2577/2006 and v) the competent executive manager of the company.
- Questionnaires completed by the abovementioned persons evaluating their capacity and suitability to undertake the contemplated business actions
- Company’s organizational structure and its position in a group of companies, if such exists
- Business plan presenting the company’s strategy on the basis of Law 4354/2015, per claims category or economy section and geographic area, at which the company is going to aim, including either an estimate of the development of the company’s financial indices over a minimum of two-years or, a Management Agreement with a specific credit institution extending at least over an equal time period.
- Manual with policies and internal procedures regarding constant compliance to the requirements of Act No 95/2016, including description of: i) policy of preventing conflict of interests, ii) accounting system and auditing procedures, iii) IT systems and management information system, iv) management methods, hierarchy and classification criteria of the portfolio, the borrowers’ handling procedures with common creditors, and the handling of portfolios on behalf of more than one institutions, if applicable. In case the company undertakes the designing of end
adjustments / restructuring solutions, the manual shall also include description of evaluation criteria for the adequacy of regulations, evaluation criteria for the maximum repayment capability of individual borrowers, taking into consideration special features which may rank them among socially vulnerable groups, as well as evaluation of legal entities’ viability, based on relevant regulations of Code of Conduct of Bank of Greece (Act 116/1/25.8.2014), v) policy of communication with borrowers (methods, frequency, standard communication forms), as well as handling of complaints procedures, vi) selection criteria for any individuals cooperating on behalf of the company and description of methods of ensuring compliance with the assignment’s contractual obligations, vii) compliance procedures. The requirements under iv), v) and vi) above do not apply to companies exercising management on behalf of monitored credit or financial institutions, which are primarily subject to the relevant obligations.

Furthermore, L.M.C.s must at all times maintain a minimum paid-up share capital at the amount of 100,000 Euro in cash.

For L.M.C.s wishing to proceed with refinancing claims (see below), in addition to managing such, according to art. 1 par. 20 Law 4354/2015 and in addition to the above requirements, it is also required: i) further enrichment with documented strategy, procedure policy and rules regulating refinancing, as well as ii) payment of capital equal to the amount of 4,500,000 Euro.

**What is the position for L.M.C.s domiciled outside Greece, which have established a Greek branch?**

For a company domiciled in another European Economic Area Member-State and which already has the right to operate in Greece through an established branch of a credit or financial institution monitored by a competent authority of a member-state of E.E.A., by virtue of Directive 2013/36/EU and Law 4261/2014 ("community passport"), in addition to the notification provided by Law 4261/2014, it should further be informed by the Bank of Greece in relation to obligations which may arise based on L.4354/2015.

**Which is the minimum content of Management agreements under L. 4354/2015?**

Agreements for the assignment of the Management of claims from loans and credit must be in writing and include at least:

- Description of each claim and its potential non-performance stage
- The scope and content of management, mainly including legal and accounting monitoring of claims, collection, negotiating with debtors and settlement agreements, as well as any other management act under the existing legislation.
- The management fee, which must not be passed on to the debtor under any circumstance.

A copy of the agreement is also submitted to the Bank of Greece, which ensures compliance with Law 4354/2015.

**Legal remedies**

The L.M.C.s are also entitled to all necessary legal remedies and can proceed to any other judicial action for the collection of the debts under their management, as well as to initiate, attend or participate in any pre-bankruptcy rehabilitation or insolvency proceedings and procedures for debt settlement or special administration in accordance with Law 4307/2014. In all such court proceedings, these management companies will appear as non-beneficiary (third) parties and any relevant judgement shall be binding upon the lenders of the relevant loans as well.

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**Which is the minimum content of Agreements of Sale and Transfer of claims from loans and credits under L. 4354/2015?**

The acquisition by L.T.C.s of claims from loans and credits, either individually or in groups against any debtor, together with any potential rights related thereto, comes into effect through an agreement in writing, provided that L.T.C.s have already concluded an agreement with a L.M.C. (see above).

The claims from non-performing loans in particular may be sold and transferred provided that the debtor and any other liable person (i.e. guarantors) have been notified via an extrajudicial notice in writing to settle their claims, within the last twelve (12) months prior to the transfer,. This prerequisite does not apply for claims which are under legal dispute or adjudicated claims or claims belonging to non – cooperative debtors (as defined in the Code of Conduct of financial and credit institutions).

The agreements for the sale and transfer of claims from loans and credits must be filed and registered with the competent Pledge Registry in order to enter into force, following notification of the debtors. A fixed amount of 2,500 Euro is also payable to the competent Registry instead of any other tax or fee, for the registration of these agreements.

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**Are debtors, whose loans and credits are managed or transferred under L. 4354/2015, capable of asking for refinancing or restructuring of their debts?**
Management Companies (L.M.C.s) under Law 4354/2015 may further grant loans or credit to the debtors, whose claims they manage, on the condition that these new loans or credits will be used exclusively for refinancing of these debtors’ loans or restructuring of these debtors’ businesses on the basis of a concrete restructuring plan as agreed between the parties. For this purpose these companies must have a minimum share capital of 4,500,000 Euro and must be granted a relevant authorization by Bank of Greece. L.M.C.s may grant new loans on the further condition that they have the prior consent of the claims’ owner. These new loans or credits will be considered as banking loans and credits, subject to Greek law.

Which is the tax regime introduced under L. 4354/2015 as amended?

The new legal framework provides for income tax on the basis of Greek Income Tax Law on any added value arising from the acquisition of claims from loans and credits under L. 4354/2015, as well as from any subsequent transfer thereof (by L.T.C.s). Nevertheless, it provides for an exemption from withholding tax applicable on interest payable to L.T.C.s regarding claims they have acquired, or interest payable to L.M.C.s regarding loans or credits they grant for refinancing purposes. An exemption from stamp duty is also provided for loan agreements concluded by L.M.C.s for refinancing or restructuring purposes.

Finally, both Management and Sale and Transfer agreements are subject to V.A.T. as applicable.