

“HERCULES” Asset Protection Scheme in full force and effect under L.4649/16.12.2019: Targets - Fundamentals - Expectations & Challenges

A. Introduction - Object of the Asset Protection Scheme

A new Asset Protection Scheme, known as “Hercules”, has been recently approved by the Greek Parliament (L.4649/2019), after receiving clearance by the European Commission (Decision No. 10.10.2019 C (2019) 7309). Under this scheme, Special Purpose Vehicles (SPVs) will be purchasing Non-Performing Exposures (NPEs) from the Greek systemic banks and issue notes disposed to investors in order to raise money to buy the bad loans. The Greek State will provide a guarantee for the senior notes of the securitization vehicle (SPV). In exchange for the said guarantee, the Greek State will receive from the participating banks a market-based commission, to be increased over time. In this way, it is anticipated that ***Greek banks participating in the scheme will remove up to 30 billion euro of NPEs out of their balance sheets, via a state guarantee instead of a state aid.***

B. Key Points of the New Legislative Framework

• Scope of Application

L.4649/2019 shall apply to securitizations of claims performed by financial institutions having their principal establishment within the Greek Territory and in accordance with the provisions of L. 3156/2003.

• Securitization Structure – Requirements

- The notes issued by the Acquirer will be divided into at least two different classes of notes (senior and junior) with an option to issue mezzanine notes. Neither the mezzanine notes nor the junior notes will benefit from the guarantee.
- The consideration paid by the Acquirer to the Transferor may not exceed the total net book value of the transferred claims as at the transfer date.
- The interest rate applied on the notes may be floating or fixed and the interest shall be paid at the end of a three-month or semi-annual or annual period.
- For the purposes of the securitization, the Acquirer may enter into any kind of credit arrangements, interest hedging contracts or any other form of contract in accordance with the provisions of art.10 par.7 of L.3156/2003.
- The management of the transferred claims must be entrusted to servicer authorized in accordance with the provi-

sions of Law 4354/2015, which must be independent (as per IFRS 10) from the Transferor.

- The notes are freely transferrable and can be admitted to trading in accordance with the relevant provisions of L.4514/2018 (MiFID II).
- The payments received from the Acquirer must be used for the repayment of the Acquirer's obligations, under the following prioritization (following deduction of securitisation costs and expenses): taxes, including any surcharges or fines, claims from the servicer's fees arising from the transferred assets servicing agreement, claims for the payment of interest from any of the loan or credit agreements concluded by the Acquirer, state claims for the payment of a premium for the guarantee provided, claims from the Acquirer's counterparties in any of the interest rate hedging agreements, interest on the senior notes, claims from any of the loan or credit agreements concluded by the Issuer not covered as above, claims from any mezzanine noteholders for the payment of interest, repayment in full of senior notes, claims from mezzanine noteholders for repayment of the principal, once the principal of the senior notes has been repaid in full, claims from junior noteholders for repayment of both the principal and any interest, once the principal of the mezzanine notes has been repaid in full.
- In the securitization documentation specific terms specifying the deferral of certain payments (to the servicer and to holders of mezzanine notes) in case of servicer's underperformance in accordance with the provisions of the law must also be included.

•Terms for the provision of State Guarantee

- The maximum aggregate amount of the Guarantee provided by the Greek State shall not exceed the amount of €12,000,000,000, which may be increased by virtue of a relevant decision of the Finance Minister.
- The Greek State shall unconditionally and irrevocably guarantee to the holders of the senior notes that, if the Acquirer/Issuer of notes does not fulfill its obligations, the Guarantor shall pay the outstanding sum to the holders of the senior notes for the account of the Acquirer under the terms and conditions of its aforementioned obligations.
- The Guarantor shall be liable as if it were the sole principal debtor and its obligations shall remain in full force and effect until the respective debt is fully paid.
- In case the Guarantor proceeds to the aforementioned payment, it shall be substituted in the rights of the holders of the senior notes.

C. Procedure for filing and assessing the applications for the provision of the State Guarantee

- The application must be filed with the Ministry of Finance by a financial institution acting as Transferor of securitized claims or by the Acquirer, and must be drafted along the lines of the relevant template attached to L.4649/2019 (Annex A).
- Deadline for filing of the application shall be the 10th of April 2021. The Guarantee is granted by virtue of a ministerial decision and becomes effective upon execution of a respective agreement between the Guarantor and the Acquirer (Tem-

plate of the Agreement included in Annex C of L.4649/2019). Additional requirements listed in article 10 of L.4649/2019 should also be met.

- In case the Guarantee does not become effective within 12 months as of the date of publication of the relevant ministerial decision, this decision shall ipso jure cease to apply.
- The amount of Commission owed to the Greek State (Guarantor) shall be determined in the ministerial decision including the terms and conditions of the effective Guarantee.
- 50 days after the obligation of the Acquirer under the senior notes becomes outstanding, the holders of the senior notes may serve to the Guarantor a request for payment of the due amounts (request for the forfeiture of the guarantee). The relevant request must be filed within 9 months as of the lapse of the aforementioned 50-day period. Within 30 days as of the receipt of the above request, the State (Guarantor) shall pay the amounts due to the holders of the senior notes.

- An independent monitoring trustee appointed by the Ministry of Finance (provided the appointment decision is approved in advance by the European Commission) shall systematically monitor the compliance with the provisions of L.4649/2019.

D. Expectations & Challenges

The Hercules Asset Protection Scheme is considered as pivotal step towards the resolution of the NPEs issue and the tackling of bad loans. It is expected that the scheme will strengthen the Greek banks through reduction of their NPEs into the Special Purpose Vehicles. “Hercules” may also prove to be a catalyst in the acceleration of efforts for the recovery of the banks’ lending support for investment and growth. Whether this recovery can be witnessed in the short run remains to be seen. The progress of the implementation of this scheme in the near future, in the current financial environment, constitutes one of the real challenges that the new government shall face.
