POTAMITISVEKRIS

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The law 4021/2011 on Bank Restructuring and the Law 3864/2010 on the Hellenic Financial Stability Fund

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1. Legislative texts:

a) Law 3864/2010, since amended several times and still subject to further revisions

b) Legislative acts of Cabinet of 2012 (since ratified by law) introducing important amendments to law 3864/2010

2. Objective

a) The preservation of the stability of the Greek banking system, including the capital enhancement of locally operating banks, as well as the funding of "transitional" institutions

b) Some degree of oversight of the operation and governance of supported institutions:

   a) Via monitoring and contributions to the business plan and its implementation,

   b) Through BoD appointee (access to info and veto rights over certain matters),

   c) Through its right to exercise (by exception to suspension) voting rights on reserved matters.

c) In practice avoidance of state control additional important objective and constraint.

3. Autonomy

- An ad hoc agency set up for a specific task – terminates June 30, 2017 (but I would expect at least short extension)
- Autonomous vis a vis the Government or any state institution
- A framework agreement with the Ministry of Finance provided for in the statute (article 16A)
- Also reports provided to the Minister of Finance, the European Commission and the ECB
- Autonomy is a delicate balance but an important aspiration.

4. Capital - Property

a) The HFSF uses own funds for its capital contributions

b) Sole shareholder is the Greek State, which in turn uses funds drawn under a special facility forming part of the bail out package.

c) To date, significant part of the capital contributions received by the HFSF is in the form of EFSF Notes, which in turn it has provided as advance to several banks to which support has been provided.

5. How HFSF contributions are activated:

The statute anticipates an application by a credit institution, the joint elaboration of a restructuring plan (referred to as a business plan) a due diligence exercise leading to a valuation and a contribution on that basis through a formal capital increase

6. Support through advances

In practice (and the statute has been amended to provide for this alternative route):

i. The BoG determines that an advance is appropriate and the amount, on the basis of a viability finding
ii. The HFSF, the EFSF and the Bank execute a Presubscription agreement
iii. Advance to become COCOs, other convertible instruments and common stock; but
iv. Subscription price, conversion formulas, dilution of existing shareholders are to be determined within a regulatory framework yet to be promulgated.

7. Capital Support Tools:

a) Guarantees (or capital enhancement) (article 16Γ(6))

b) Cocos

c) Other convertible debt instruments

d) Common shares

   i. The suspension of voting rights (article 7^{α}):

   If minimum contributions to new capital raised by private sector at least 10, then voting rights of shares held by HFSF suspended;

   Except for certain reserved matters

   Suspension terminates upon material breach of restructuring plan (held unanimously by HFSF organs)

   Also note certification in support of “going concern” (Article 6(8))

8. Valuation Issues

a) Subscription price

i. If no advance (article 7(3)): fair market

ii. In case of advance (article 6(10)): as will be determined by legislation

b) Warrant issuance (article 7(4))

HFSF is empowered to issue warrants against its shares to private sector participants in capital increase – additional incentive

c) Disposal Price (Article 8): within 5 years – objective is maximization of return on investment; promotion of benefit to State – also bearing in mind financial stability and free competition

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9. The HFSF as work in progress

a) The HFSF is still being shaped
b) Fast changing landscape requiring frequent changes in course
c) Risk of disorientation
d) Importance of maintaining focus on goals:
   i. Preserving viable systemic banks
   ii. Avoiding bank nationalization
   iii. Nursing supported banks back to financial health through implementation of restructuring plan