



## **BANK OF GREECE**

### **EUROSYSTEM**

THE EXECUTIVE COMMITTEE

#### MEETING No. 178/2.10.2020

Subject 4: Amendment to Executive Committee Act 142/11.6.2018 “Procedures for (a) the authorisation of credit institutions in Greece; (b) the acquisition of, or increase in, a holding in credit institutions; and (c) the taking up of a post as a member of the board of directors and as a key function holder of credit institutions” (Government Gazette B 2674/2018)

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THE EXECUTIVE COMMITTEE OF THE BANK OF GREECE, having regard to:

- (a) Articles 2, 28 and 55A of the Statute of the Bank of Greece (Government Gazette A 298/1927);
- (b) Law 4261/2014 “Access to the activity of credit institutions and prudential supervision of credit institutions and investment firms (transposition of Directive 2013/36/EU), repeal of Law 3601/2007, and other provisions” (Government Gazette A 107), in particular the provisions of Articles 4, 6, 15, 23, 24 and 28 thereof;
- (c) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331 (15.12.2010) 12), in particular Article 16 thereof;
- (d) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287 (29.10.2013) 63), in particular Articles 4 and 6 thereof;
- (e) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141 (14.5.2014) 1), in particular Articles 85-87 thereof;



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- (f) Law 4557/2018 “Prevention and suppression of money laundering and terrorist financing (transposition of Directive 2015/849/EU), and other provisions” (Government Gazette A 139/2018);
- (g) the Joint Committee of the European Supervisory Authorities Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01);
- (h) the Draft Regulatory Technical Standards under Article 8(2) of Directive 2013/36/EU on the information to be provided for the authorisation of credit institutions, the requirements applicable to shareholders and members with qualifying holdings and obstacles which may prevent the effective exercise of supervisory powers (EBA/RTS/2017/08); and
- (i) the fact that no expenditure shall be incurred by the Government Budget as a result of the provisions of this Act,

#### **HEREBY DECIDES AS FOLLOWS:**

To amend Executive Committee Act 142/11.6.2018 “Procedures for (a) the authorisation of credit institutions in Greece; (b) the acquisition of, or increase in, a holding in credit institutions; and (c) the taking up of a post as a member of the board of directors and as a key function holder of credit institutions” (Government Gazette B 2674) with respect to the applicable procedure for the assessment of acquisition of, or increase in, a qualifying holding in an existing credit institution established in Greece.

1. Chapter B of the above Executive Committee Act shall be replaced to read as follows:

#### **“B. PROCEDURE OF ACQUISITION OF, OR INCREASE IN, A HOLDING IN AN EXISTING CREDIT INSTITUTION ESTABLISHED IN GREECE**

This Chapter shall apply to the assessment of the acquisition of, or increase in, a qualifying holding in existing credit institutions established in Greece on the basis of the principle of proportionality.



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#### **Title I - Requirement to submit questionnaires and to notify the Bank of Greece**

1. If a proposed acquirer who is a natural person:
  - (a) alone or acting in concert, within the meaning of Article 23(5) of Law 4261/2014, has decided to acquire, directly or indirectly (on the basis of the criteria set out in Title II of this Chapter), a qualifying holding, as defined in Article 3(1)(33) of Law 4261/2014, in a credit institution; or
  - (b) alone or acting in concert, within the meaning of Article 23(5) of Law 4261/2014, has decided to increase further, directly or indirectly (on the basis of the criteria set out in Title II of this Chapter), an existing qualifying holding in a credit institution, so that the proportion of the voting rights or of the capital held would reach or exceed 20%, 1/3 or 50%, or so that the credit institution would become its subsidiary; or
  - (c) although not included in the above cases, plans, through written or other arrangements or concerted action, within the meaning of Article 23(5) of Law 4261/2014, to control the credit institution, within the meaning of Article 3(1)(34) of Law 4261/2014,  
the said person shall notify in writing the Bank of Greece, completing and submitting the questionnaire “Assessment of proposed acquisition of a holding by natural persons” (Annex II hereto) and the questionnaire contained in Annex III hereto, along with the required documentation.
2. If a proposed acquirer who is a legal person meets the conditions of para. 1(a), (b) or (c) above, it shall notify in writing the Bank of Greece, completing and submitting the questionnaire “Assessment of proposed acquisition of a holding by legal persons” (Annex II hereto) and the questionnaire contained in Annex III hereto, along with the required documentation.
3. To avoid undue delays in the notification and assessment process of significant or complex transactions, proposed acquirers are encouraged to engage in contacts with the Bank of Greece before the notification under paras. 1 and 2 above. Significant or complex transactions could include:



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- (a) transactions where the proposed acquirer or the credit institution has a complex group structure;
- (b) cross-border transactions;
- (c) transactions involving significant proposed changes to the business plan or strategy of the credit institution; and
- (d) transactions involving the use of substantial debt financing.

These pre-notification contacts shall focus on the information required by the Bank of Greece to start its assessment of an acquisition or increase of a qualifying holding.

4. Every natural or legal person that has decided to acquire or increase further, directly or indirectly (on the basis of the criteria set out in Title II of this Chapter), an existing holding in a credit institution established in Greece so that the holding in the capital or the attached voting rights would reach or exceed 5%, it shall notify in advance the Bank of Greece of the proposed new holding percentage. If, within five (5) business days, the Bank of Greece judges that, as a result of the proposed holding, the proposed acquirer will be able to exercise significant influence over the management of the credit institution according to the criteria set out in Title IV of this Chapter, the proposed acquirer shall complete and submit the questionnaires required under para. 1 (if a natural person) or 2 (if a legal person) above, as appropriate.

5. If a natural or legal person acquires a holding or increases an existing holding in a credit institution, as a result of which it becomes one of the twenty largest shareholders of the credit institution, it shall notify the Bank of Greece of its identity and holding percentage. The Bank of Greece may also require these persons to submit the relevant questionnaires, as appropriate.

6. The Bank of Greece may also require natural or legal persons that hold or acquire, directly or indirectly (on the basis of the criteria set out in Title II of this Chapter), a holding or voting rights of more than 1% of the share capital of a credit institution to provide data and submit the relevant questionnaires, as appropriate.



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7. Where a holding in a credit institution has been acquired through persons that provide custody services, the Bank of Greece may require them to disclose the shareholders that have a holding equal to, or higher than, 1% of the total share capital of the credit institution.

8. The Bank of Greece may allow the parent undertaking or the beneficial owner, within the meaning of Article 3(17) of Law 4557/2018 “Prevention and suppression of money laundering and terrorist financing (transposition of Directive 2015/849/EU), and other provisions” (Government Gazette A 139), to make the notification and submit the questionnaires in the name and on behalf of the legal persons that are indirect proposed acquirers under the provisions of this Chapter.

9. If the proposed acquirer has been assessed by the Bank of Greece within the previous two years, that proposed acquirer shall only provide those pieces of information that have changed since the previous assessment. Where there have been no changes, the proposed acquirer shall sign a declaration informing the Bank of Greece that there is no need to update such information, since it remains unchanged from the previous assessment. Natural and legal persons that are required to submit the relevant questionnaires under this Chapter B shall notify the Bank of Greece of any change in material data that could affect their suitability for the post they hold, submitting anew the relevant questionnaires.

10. If the proposed acquirer plans to appoint new members of the board of directors as a result of a proposed acquisition, he shall notify to the Bank of Greece both his intention and the new members, if they are known to him. These persons shall submit to the Bank of Greece the questionnaire “Fit and proper assessment of members of the Board of Directors and key function holders” (Annex II hereto). If the new persons are not known at the time of the application for the proposed acquisition, their assessment shall be conducted in accordance with the provisions of Chapter C subsequent to the approval of the application for the proposed acquisition.



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#### **Title II – Existence of an indirect qualifying holding**

11. The following tests shall apply for assessing if a qualifying holding is acquired indirectly and the size of such holding when:

- (a) a natural or legal person acquires or increases a direct or indirect participation in an existing holder of a qualifying holding; or
- (b) a natural or legal person has a direct or indirect holding in a person which acquires or increases a direct participation in a credit institution.

For each person under (a) or (b) above, the control criterion as described in para. 12 shall be applied first. If, from the application of such criterion, it is ascertained that the relevant person does not exert or acquire, directly or indirectly, control over an existing holder or an acquirer of a qualifying holding in a credit institution, the multiplication criterion, as illustrated in para. 13, shall be subsequently applied in respect of that person. The control and the multiplication criteria shall be applied along each branch of the corporate chain.

12. Regarding the control criterion, the following shall apply:

(a) Under the control criterion, a qualifying holding shall be considered to be acquired indirectly if:

(i) natural or legal persons acquire directly or indirectly control, within the meaning of Article 3(1)(34) of Law 4261/2014, or through written or other arrangements or concerted action, over an existing holder of a direct or indirect qualifying holding;

(ii) natural or legal persons control, within the meaning of Article 3(1)(34) of Law 4261/2014, or through written or other arrangements or concerted action, directly or indirectly a person that acquires or increases directly a qualifying holding in a credit institution.

(b) In case (a) above, the indirect acquirers include the ultimate natural person or persons at the top of the corporate control chain, i.e. the real beneficial owner of the legal person, within the meaning of Article 3(17) of Law 4557/2018.



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(c) In the case set out in para. (a), item (i), above, relating to the indirect acquisition of a qualifying holding, each of the persons acquiring, directly or indirectly, control over an existing holder of a qualifying holding shall be an indirect acquirer of a qualifying holding and shall submit the prior notification to the Bank of Greece. The existing holder of the qualifying holding shall not be required to submit the prior notification. The person or persons at the top of the corporate control chain may submit the prior notification also on behalf of the intermediate holders. The size of the holding of each indirect acquirer so identified shall be deemed equal to the qualifying holding of the existing holder over which control is acquired.

(d) In the case set out in para. (a), item (ii), above, relating to the indirect acquisition of a qualifying holding by a person as a consequence of such person having, directly or indirectly, control over the proposed direct acquirer of a qualifying holding in the credit institution, the direct acquirer and the indirect acquirers so identified shall submit a prior notification to the Bank of Greece regarding their intention to acquire or increase a qualifying holding. The person or persons at the top of the corporate control chain may submit the prior notification also on behalf of the intermediate holders; however, this is without prejudice to the proposed direct acquirer's obligation to submit to the Bank of Greece the prior notification in respect of its own acquisition of a qualifying holding. The size of the holding of each indirect acquirer shall be deemed to be equal to the qualifying holding acquired directly.

13. The second step shall apply where the application of the control criterion does not determine that a qualifying holding was acquired indirectly by the person to which the control criterion is applied. The multiplication criterion entails the multiplication of the percentages of the holdings across the corporate chain, starting from the participation held or acquired directly in the credit institution, which has to be multiplied by the participation held at the level immediately above (the result of such multiplication being the size of the indirect holding of the latter person) and continuing up the corporate chain for so long as the result of the multiplication continues to be 10% or more. A qualifying holding will be deemed to be acquired indirectly:



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(a) by each of the persons in respect of which the result of the multiplication is 10% or more; and

(b) by all persons holding, directly or indirectly, control over the person or persons identified pursuant to the application of the multiplication criterion in accordance with item (a) above.

14. Where indirect acquirers are supervised credit institutions and the Bank of Greece is already in possession of up-to-date information, the Bank of Greece may deem it sufficient, taking into account the particular circumstances of the case, to assess fully only the real beneficial owner, within the meaning of Article 3(17) of Law 4557/2018, in addition to the proposed direct acquirer. This does not affect the obligation of each of the proposed indirect acquirers to submit a notification to the Bank of Greece regarding the intention to indirectly acquire or increase a qualifying holding in a credit institution, without prejudice to para. 8 of this Chapter B.

#### **Title III – Acting in concert**

15. Where two or more proposed acquirers acting in concert, within the meaning of Article 23(5) of Law 4261/2014, have decided to acquire or increase a qualifying holding in a credit institution or take control over a credit institution, each of the persons concerned, or one person on behalf of the rest of the group of persons acting in concert, shall notify the Bank of Greece. However, each of the acquirers shall submit the questionnaires required as appropriate in accordance with paras. 1 and 2 of this Chapter B.

16. To determine whether the persons acting in concert fall within the scope of para. 1(a), (b) or (c) of this Chapter, their holdings shall be aggregated.

17. With a view to assessing whether certain persons are acting in concert, the following factors shall be considered:

(a) shareholder agreements and agreements on matters of corporate governance (excluding, however, pure share purchase agreements, tag along and drag along agreements and pure statutory pre-emption rights); and





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(b) other evidence of collaboration, for example:

(i) the existence of family relationships;

(ii) whether the proposed acquirer holds a senior management position or is an executive or non-executive member of the board of directors of the credit institution or is able to appoint such a person;

(iii) the relationship between undertakings in the same group (excluding, however, those situations which satisfy the independence criteria set out in Article 13(2), (4) and (5) of Law 3556/2007 “Transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, and other provisions, Government Gazette A 91);

(iv) the use by different persons of the same source of finance for the acquisition or increase of holdings in the credit institution; and

(v) consistent patterns of voting by the relevant shareholders.

18. The factors listed in para. 17 above are indicative, non-binding and always subject to case-by-case prudential assessment. The existence of any one of the above factors in and of itself does not necessarily lead to a conclusion that the acquirers concerned are acting in concert.

19. The following activities do not lead, in and of themselves, to the conclusion that the proposed acquirers are acting in concert, unless there are facts about the relationship between the shareholders, their objectives, their actions or the results of their actions which suggest that their cooperation in relation to any of these activities is not merely an expression of a common approach on a specific matter, but an element of a broader agreement or understanding between the shareholders:

(a) entering into discussions with each other about possible matters to be raised with the board of directors of the credit institution;

(b) making representations to the board of directors of the credit institution about policies, practices or particular actions that the credit institution might consider taking;

(c) other than in relation to the appointment of members of the board of directors, exercising shareholders’ statutory rights to:



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- (i) add items to the agenda of a general meeting;
  - (ii) table draft resolutions for items included or to be included on the agenda of a general meeting; or
  - (iii) call a general meeting, other than the annual general meeting;
- (d) other than in relation to a resolution for the appointment of members of the board of directors and, in so far as such a resolution is provided for under national company law, agreeing to vote in the same way on a particular resolution put to a general meeting, in order, for example:

- (i) to approve or reject:
  - (aa) a proposal relating to directors' remuneration;
  - (bb) an acquisition or disposal of assets;
  - (cc) a reduction of capital and/or share buy-back;
  - (dd) a capital increase;
  - (ee) a dividend distribution;
  - (ff) the appointment, removal or remuneration of auditors;
  - (gg) the appointment of a special investigator;
  - (hh) the financial statements; or
  - (ii) the credit institution's policy in relation to the environment or any other matter relating to social responsibility or compliance with recognised standards or codes of conduct; or
- (ii) to reject a related party transaction.

20. Especially regarding the cooperation between shareholders in relation to the appointment of members of the board of directors, for the assessment of acting in concert, the following elements shall be considered in addition to examining the activities described in para. 19:

- (a) the nature of the relationship between the shareholders and the proposed member(s) of the board of directors;
- (b) the number of proposed members of the board of directors being voted for pursuant to a voting agreement;



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(c) whether the shareholders have cooperated in relation to the appointment of members of the board of directors on more than one occasion;

(d) whether the shareholders are not simply voting together, but are also jointly proposing a resolution for the appointment of certain members of the board of directors;  
and

(e) whether the appointment of the proposed member(s) of the board of directors will lead to a shift in the balance of power in such board of directors.

21. As inaction may contribute to creating the conditions for an acquisition or increase of a qualifying holding or for exercising influence over the credit institution, it may be concluded that certain persons are acting in concert merely due to the fact that one or several such persons are passive.

#### **Title IV – Significant influence**

22. For the purpose of assessing whether a proposed acquisition of a holding would make it possible for the proposed acquirer to exercise significant influence over the management of the credit institution, whether such influence is actually exercised or not, the following non-exhaustive list of factors shall be taken into account, as well as all the relevant circumstances of the case:

(a) the existence of material and regular transactions between the proposed acquirer and the credit institution;

(b) the relationship of each member or shareholder with the credit institution;

(c) whether the proposed acquirer enjoys additional rights in the credit institution, by virtue of a contract entered into or of a provision contained in the credit institution's articles of association or other constitutional documents;

(d) whether the proposed acquirer is a member of, has a representative in or is able to appoint a representative in the board of directors of the credit institution, as an executive or non-executive member;

(e) the overall ownership structure of the credit institution or of the parent undertaking of the credit institution, having regard, in particular, as to whether shares



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or participating interests and voting rights are distributed across a large number of shareholders or members;

- (f) the existence of relationships between the proposed acquirer and the existing shareholders and any shareholders' agreement that would enable the proposed acquirer to exercise significant influence;
- (g) the proposed acquirer's position within the group structure of the credit institution; and
- (h) the proposed acquirer's ability to participate in the operating and financial strategy decisions of the credit institution.

#### **Title V – Involuntary crossing of threshold/Involuntary acquisition or increase of a qualifying holding**

23. In order to assess whether a decision to acquire has been made, the following non-exhaustive list of elements shall be taken into account:

- (a) whether the proposed acquirer was aware or, considering information it could have had access to, should have been aware of the acquisition/increase of a qualifying holding and the transaction giving rise to it; and
- (b) whether the proposed acquirer had the ability to influence, to object to or to prevent the proposed acquisition or increase of a qualifying holding.

24. Should shareholders cross a threshold of which prior notification is required, without a prior decision to acquire (involuntary crossing of threshold), they shall notify the Bank of Greece immediately upon becoming aware of such event, even if they intend to reduce their level of shareholding so that it once again falls below the threshold level. Examples of scenarios in which shareholders may cross a threshold involuntarily include a repurchase by the financial institution of shares held by other shareholders, which leads directly to such threshold being exceeded.

25. Credit institutions shall inform in a timely manner the holders of convertible securities that, should the exercise of the conversion right make them subject to Article



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23 of Law 4261/2014, they shall be subject, before exercising the conversion right, to the notification requirements of this Chapter.

#### **Title VI – Special requirements for the assessment of intra-group transactions**

26. For intra-group transactions:

(a) a notification shall be submitted by the proposed acquirer, identifying the upcoming changes in the group (for instance, the revised group structure chart) and providing the required information concerning the new persons and/or entities in the group. This refers to the direct or indirect owners of the qualifying holding, as well as to the persons who effectively direct the business of the proposed acquirer;

(b) the full assessment procedure is only necessary for the new persons and/or entities in the group and the new group structure; and

(c) if there is a change in the nature of a qualifying holding so that an indirect qualifying holding becomes a directly held qualifying holding and the relevant holder has already been assessed, the Bank of Greece shall consider limiting its assessment to the changes having occurred since the date of the last assessment.

27. Where the proposed acquirer may encounter difficulties in obtaining information which is needed to establish a full business plan, such as in the case of acquisitions by means of a public offer, the proposed acquirer shall bring such difficulties to the attention of the Bank of Greece and point out the aspects of its business plan that might be modified in the near future.”

2. The Questionnaire “Assessment of proposed acquisition of a holding by natural persons” in Annex II to Executive Committee Act 142/11.6.2018 shall be replaced by the Questionnaire in Annex A hereto.

3. The Questionnaire “Assessment of proposed acquisition of a holding by legal persons” in Annex II to Executive Committee Act 142/11.6.2018 shall be replaced by the Questionnaire in Annex B hereto.



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4. Annex III to Executive Committee Act 142/11.6.2018 shall be replaced by Annex C hereto.
5. The provisions of Chapter B, Annex II and Annex III to Executive Committee Act 142/11.6.2018, as they read before the entry into force hereof, shall apply to the assessment of any applications pending at the time of entry into force hereof.
6. As from the entry into force hereof, any reference to the criteria set out in para. 10 of Chapter B of Executive Committee Act 142/11.6.2018 shall be understood as a reference to Title II of Chapter B of this Act.
7. The Banking Supervision Department is authorised to provide instructions and clarifications regarding the implementation hereof.
8. Annexes A, B and C shall be an integral part hereof.
9. This Act shall be published in the Government Gazette and posted on the website of the Bank of Greece.

The Deputy Governor

The Deputy Governor

The Governor

Theodoros Pelagidis

Theodoros Mitrakos

Ioannis Stournaras