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The International Comparative Legal Guide to:

Securitisation 2013

6th Edition

A practical cross-border insight into securitisation work

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Sub Editor

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Senior Editor

Penny Smale

Group Consulting Editor

Alan Falach

Group Publisher

Richard Firth

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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General Chapters:

1	Documenting Securitisations in Leveraged Finance Transactions – Dan Maze & James Burnett, Latham & Watkins LLP	1
2	CLOs: An Expanding Platform – Craig Stein & Paul N. Watterson, Jr., Schulte Roth & Zabel LLP	7
3	US Taxation of Non-US Investors in Securitisation Transactions – David Z. Nirenberg, Ashurst LLP	12
4	Debt Trading: A Practical Guide for Buyers and Sellers – Paul Severs & Lucy Oddy, Berwin Leighton Paisner LLP	24
5	Cliffhanger: The CMBS Refinancing Challenge – Stuart Axford & Colin Tan, Kaye Scholer LLP	30

Country Question and Answer Chapters:

6	Argentina	Estudio Beccar Varela: Damián F. Beccar Varela & Roberto A. Fortunati	34
7	Australia	King & Wood Mallesons: Anne-Marie Neagle & Ian Edmonds-Wilson	44
8	Austria	Fellner Wratzfeld & Partners: Markus Fellner	54
9	Brazil	Levy & Salomão Advogados: Ana Cecília Giorgi Manente & Fernando de Azevedo Peraçoli	63
10	Canada	Torys LLP: Michael Feldman & Jim Hong	73
11	Chile	Bofill Mir & Álvarez Jana Abogados: Octavio Bofill Genzsch & Daniela Buscaglia Llanos	83
12	China	King & Wood Mallesons: Roy Zhang & Ma Feng	92
13	Czech Republic	TGC Corporate Lawyers: Jana Střížová & Andrea Majerčíková	104
14	Denmark	Accura Advokatpartnerselskab: Kim Toftgaard & Christian Sahlertz	113
15	England & Wales	Weil, Gotshal & Manges: Rupert Wall & Jacky Kelly	123
16	France	Freshfields Bruckhaus Deringer LLP: Hervé Touraine & Laureen Gauriot	135
17	Germany	Cleary Gottlieb Steen & Hamilton LLP: Werner Meier & Michael Kern	146
18	Greece	KG Law Firm: Christina Papanikolopoulou & Athina Diamanti	160
19	Hong Kong	King & Wood Mallesons: Paul McBride & Michael Capsalis	169
20	India	Dave & Girish & Co.: Mona Bhide	180
21	Ireland	A&L Goodbody: Peter Walker & Jack Sheehy	190
22	Israel	Caspi & Co.: Norman Menachem Feder & Oded Bejarano	201
23	Italy	Chiomenti Studio Legale: Francesco Ago & Gregorio Consoli	211
24	Japan	Nishimura & Asahi: Hajime Ueno	221
25	Luxembourg	Bonn & Schmitt: Alex Schmitt & Andreas Heinzmann	234
26	Mexico	Cervantes Sainz, S.C.: Diego Martínez Rueda-Chapital	245
27	Morocco	Benzakour Law Firm: Rachid Benzakour	254
28	Netherlands	Loyens & Loeff N.V.: Mariëtte van 't Westeinde & Jan Bart Schober	262
29	Norway	Advokatfirmaet Thommessen AS: Berit Stokke & Sigve Braaten	275
30	Panama	Patton, Moreno & Asvat: Ivette Elisa Martínez Saenz & Ana Isabel Díaz Vallejo	284
31	Poland	TGC Corporate Lawyers: Marcin Gruszko & Grzegorz Witczak	294
32	Portugal	Vieira de Almeida & Associados: Paula Gomes Freire & Benedita Aires	304
33	Saudi Arabia	King & Spalding LLP: Nabil A. Issa	316
34	Scotland	Brodies LLP: Bruce Stephen & Marion MacInnes	324
35	Slovakia	TGC Corporate Lawyers: Kristína Drábiková & Soňa Pindešová	333

Continued Overleaf

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Country Question and Answer Chapters:

36	Spain	Uría Menéndez Abogados, S.L.P.: Ramiro Rivera Romero & Jorge Martín Sainz	342
37	Switzerland	Pestalozzi Attorneys at Law Ltd: Oliver Widmer & Urs Klöti	356
38	Taiwan	Lee and Li, Attorneys-at-Law: Hsin-Lan Hsu & Mark Yu	368
39	Trinidad & Tobago	J.D. Sellier + Co.: William David Clarke & Donna-Marie Johnson	379
40	UAE	King & Spalding LLP: Rizwan H. Kanji	389
41	USA	Latham & Watkins LLP: Lawrence Safran & Kevin T. Fingeret	397

EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Securitisation*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of securitisation.

It is divided into two main sections:

Five general chapters. These are designed to provide readers with a comprehensive overview of key securitisation issues, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in securitisation laws and regulations in 36 jurisdictions.

All chapters are written by leading securitisation lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Mark Nicolaides of Latham & Watkins LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Greece

Christina Papanikolopoulou



Athina Diamanti



KG Law Firm

1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller, (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a receivable “contract” be deemed to exist as a result of the behaviour of the parties?

- (a) A formal receivables contract is not necessary in order to create an enforceable debt obligation, unless otherwise provided in the law (article 158 of the Greek Civil Code, GCC), e.g. certain debts arising under consumer legislation must be concluded in writing.
- (b) An invoice (depending on its terms) may itself represent the contract between the parties or evidence an obligation arising from such contract. An invoice is enforceable without an underlying contract, provided it has been accepted by the obligor.
- (c) Where a contract is oral, evidence of the parties’ conduct is admissible for the purposes of ascertaining the terms of the contract. Moreover, a contract may be implied between parties based on the conduct of the parties or continuous dealings between them (e.g. in the context of a frame agreement), where the obligations arising from the implied contract are sufficiently certain/specific to be enforceable. In all cases where an obligation allegedly arises from an oral contract, it is up to the competent court to determine the existence of such obligation and the terms thereof.

1.2 Consumer Protections. Do Greek laws (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

- (a) There are no limits on the interest set on banking loan and credit agreements of any type; however, banking interest rates and compound interest thereon are subject to restrictions, mainly with respect to unilateral changes of interest rates by the banks and frequency of interest capitalisation.
Non-bank interest rates (and default interest rates) of contractual obligations are capped at a rate which is adjusted periodically by reference to the ECB rates. Compound interest is allowed only subject to certain conditions.
- (b) Yes. Statutory right to interest on late payments in commercial transactions is provided by presidential decree

166/2003 transposing European Directive 2000/35/EC into Greek law.

- (c) Yes. Certain clauses of receivables contracts may be unfair or abusive according to various legislative provisions and/or Greek courts’ rulings.
- (d) Greece has transposed European legislation on consumer protection; therefore, a consumer benefits from the protection accorded by such legislation, both general and special.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

In most cases, yes. Products sold and services rendered to state authorities and the public sector in general are governed by (a) the special provisions of European legislation regulating public procurement, as such legislation is transposed into Greek law, and (b) special Greek law provisions which reserve favourable treatment to the Greek state in a series of matters (e.g. prolonged duration of deadlines, prolonged prescription periods, approval and/or authorisations required for the validity of certain contracts concluded with the government, special delivery mechanisms, special requirements for enforcement against the government/government agencies, etc.).

2 Choice of Law - Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in Greece that will determine the governing law of the contract?

In case both the seller and the obligor are Greek residents, delivery is agreed to take place in Greece and no other foreign elements appear in the receivables contract, Greek law will apply. In case one of the parties is not a Greek resident and/or delivery is agreed to take place outside Greece and/or other foreign elements appear in the receivables contract, the governing law thereto will be determined, in the absence of a specific choice of law, (a) pursuant to EU Regulation 593/2008 of 17 June 2008 on the law applicable to contractual obligations (“Rome I”), in case the contract was entered into on or after 17 December 2009, or (b) pursuant to the Rome Convention on applicable law on contractual obligations dated 19 June 1980 (the **Rome Convention**), which was transposed

into Greek law by law 1792/1988 and entered into effect on 1 April 1991, in case the contract was entered into prior to 17 December 2009. For those contracts which fall outside the scope of the Rome Convention or Rome I, the applicable law will be decided pursuant to article 25 GCC, according to which the contract is governed by the law to which the parties have submitted themselves and, in absence thereof, by the law which is appropriate to the contract, after taking into consideration all special circumstances of the case.

Specific contracts are regulated by special private international law provisions (such as consumer contracts, guaranties, international sales contracts, contracts of carriage, insurance contracts and individual employment contracts).

2.2 Base Case. If the seller and the obligor are both resident in Greece, and the transactions giving rise to the receivables and the payment of the receivables take place in Greece, and the seller and the obligor choose the law of Greece to govern the receivables contract, is there any reason why a court in Greece would not give effect to their choice of law?

No, there is not.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in Greece but the obligor is not, or if the obligor is resident in Greece but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in Greece give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

Pursuant to the Rome Convention and Rome I, the contracting parties are free to choose the law of their contract (including a foreign law); such choice may be modified only to the extent that it conflicts with overriding Greek mandatory rules or Greek public policy (*ordre public*) or if there are special protective provisions for certain contracts or for certain types of contracting parties (such as consumers). For those types of contracts not within the scope of the Rome Convention or Rome I, article 25 GCC also gives priority to the *lex voluntatis* (the foreign law which the parties have chosen) and will modify such choice in case of abuse or violation of Greek mandatory rules or Greek public policy.

2.4 CISG. Is the United Nations Convention on the International Sale of Goods in effect in Greece?

Yes, it has been transposed into Greek law by law 2392/1997.

3 Choice of Law - Receivables Purchase Agreement

3.1 Base Case. Does Greek law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., Greek laws or foreign laws)?

Greek law does not require that a sales contract be governed by the law governing the underlying receivables, irrespective of which law

governs the receivable. However, the *in rem* transaction resulting from such sale, i.e. the transfer of the receivables, will be governed by the law of the underlying receivable; therefore, formalities for completion of the transfer, such as the announcement of the transfer to third parties or registration thereof (where applicable) in public registries, that are required under the law of the receivable, must be complied with.

3.2 Example 1: If (a) the seller and the obligor are located in Greece, (b) the receivable is governed by the law of Greece, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of Greece to govern the receivables purchase agreement, and (e) the sale complies with the requirements of Greece, will a court in Greece recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

In general, yes.

In securitisation transactions in particular, in which the seller is domiciled in Greece or operates through a permanent establishment in Greece and the purchaser is established solely for the purpose of acquiring the business claims and is the issuer of the bonds, article 10 of Greek law 3156/2003 applies (the **Securitisation Law**). Pursuant to the Securitisation Law, unless otherwise provided in the respective receivables sale agreement, the agreement is governed by the relevant GCC provisions, while the transfer agreement by the provisions regulating assignment contracts of the GCC, to the extent these are not contrary to provisions of the Securitisation Law. In most public Greek securitisations, the receivables sale agreement is governed by foreign law, while the transfer (assignment) agreement (and thus the registration obligation arising there from) is governed by Greek law.

In securitisation transactions where the seller is the government or a government agency, specific provisions apply; however, transfer formalities notwithstanding, the seller and the purchaser may submit the receivables sale agreement to foreign law.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside Greece, will a court in Greece recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

A Greek court will recognise the sale as effective, without taking into consideration any foreign law, as long as Greek law requirements (especially the registration obligation as regards the transfer of *in rem* rights over the receivables) are met; in particular as regards bankruptcy of the (Greek) seller, it should be noted that the Securitisation Law provides for the ring-fencing of the securitisation transaction against the subsequent bankruptcy of the seller.

3.4 Example 3: If (a) the seller is located in Greece but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in Greece recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with Greece's own sale requirements?

Yes, it will.

3.5 Example 4: If (a) the obligor is located in Greece but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in Greece recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with Greece's own sale requirements?

Yes. It should be noted that the provision of EU Directive 93/13 on consumer protection, which characterises as abusive clauses that entitle the provider of the goods/services to assign the contract, even if such assignment reduces the consumer's protections, has not been transposed into Greek law.

3.6 Example 5: If (a) the seller is located in Greece (irrespective of the obligor's location), (b) the receivable is governed by the law of Greece, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in Greece recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in Greece and any third party creditor or insolvency administrator of any such obligor)?

Please refer to our answer to question 3.1 above.

4 Asset Sales

4.1 Sale Methods Generally. In Greece what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology - is it called a sale, transfer, assignment or something else?

Receivables are sold under a sales contract. The transfer thereof is effected through assignment of the underlying claims (GCC 455 *et seq.*) whereby the assignor (seller) transfers its claims against an obligor to the assignee (purchaser).

Under more complex structures of receivables' sales, claims may be transferred through factoring or forfeiting agreements (law 1905/1990), certain forms of covered bonds (law 3601/2007) and securitisation transactions (Securitisation Law).

Under such transactions, the law and relevant documentation usually refers to "sale" or "transfer" of claims.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

In sales effected under the general provisions of the GCC, the assignment of the claim must be notified to the obligor, the notification (by either the assignee or the assignor) being a condition to the effectiveness of the transfer *vis-à-vis* the obligor.

Under *securitisation* transactions, notification is effected by registration of the transaction with the competent land registry. Registration is provided as a condition to most of the privileges set out in the Securitisation Law.

Notwithstanding effects of the notification (or registration, as the case may be) but given that the assignment agreement is binding upon its parties, it is debatable whether the purchaser may further transfer the assigned claim prior to the notification, the jurisprudence and legal theory having different views on the matter.

In any case, prior to the notification (or registration, as the case may be) the purchaser (and any of its transferees) bears the risk of: (a) payment to the assignor, which releases the obligor from all its liabilities under the relevant contract; (b) enforcement of the assignor's creditors against the receivable in question which is considered to be part of its property; and (c) assignor's insolvency taking into account that the said receivable is considered to be part of the bankruptcy property.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Promissory Notes and other forms of debt marketable instruments are transferred following a relevant agreement, endorsement and delivery to the purchaser (or a person acting on its behalf).

Mortgage loans and other secured receivables are transferred in accordance with the abovementioned (under question 4.2) procedure. The securities of such loans and receivables, being ancillary rights, are transferred with the respective secured claim subject to relevant formalities (see question 4.11).

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Does the answer to this question vary if (a) the receivables contract does not prohibit assignment but does not expressly permit assignment; or (b) the receivables contract expressly prohibits assignment? Whether or not notice is required to perfect a sale, are there any benefits to giving notice - such as cutting off obligor set-off rights and other obligor defences?

Notification requirements are set out under question 4.2. The obligor's consent is not required for the transfer of the receivable, unless otherwise provided in the underlying contract.

The sale and assignment of receivables that is subject to the Securitisation Law may be agreed without the obligor's consent, irrespective of contractual provisions in the respective contracts imposing consent as a condition precedent to the transfer of the

underlying receivables. However, the obligor may invoke against the assignee any rights and defences (including set-off) that it had against the assignor prior to the notification, subject to certain conditions.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings against the obligor or the seller have commenced? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

Notice of *assignment* need not be effected in any particular form (special notification procedures being provided for assignments by way of security), provided that there is sufficient evidence of receipt of the notification by the obligor. One of the most usual methods of delivery is notice by a court bailiff.

Registration of assignments entered into under the Securitisation Law is made to the competent registry by way of submission of a specific form, to which are annexed lists of the assigned receivables. Under the Securitisation Law, the purchaser does not acquire from the transfer any rights against the obligor before such registration is effected.

Specific time limits are not provided by the law, subject to the legal risks that may be incurred prior to the notification (question 4.2). Groups of receivables (including future receivables) may be subject to assignment, provided that they are described in a sufficiently specific way in the respective receivables sale agreement. The nature of the receivables is irrelevant to the notification procedure.

4.6 Restrictions on Assignment; Liability to Obligor. Are restrictions in receivables contracts prohibiting sale or assignment generally enforceable in Greece? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If Greece recognises prohibitions on sale or assignment and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or on any other basis?

Contractual restrictions on assignment/transferability of claims are acknowledged by the Greek courts (but see question 4.4 on the special securitisation transactions regime overriding said arrangements). Such arrangements do not have an *erga omnes* effect, but the assignor may be liable under the contract for any damages resulting from breach of the relevant contractual undertaking.

4.7 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells all of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

Assigned claims must be defined or at least be described in a clear

and unambiguous way so as to avoid nullity of the transfer due to uncertainty on the transferred receivables; the same applies as regards the identity of the obligor. In case the seller sells *all* of its receivables *other than* receivables owed by one or more specifically identified obligors, the receivables are deemed to be sufficiently identified, as long as it may unambiguously be deduced which receivables are transferred.

For the purpose of registrations under the Securitisation Law, a full list of the transferred receivables (identification of the contract, name and address of obligor(s)/guarantors, amount of the receivables, maturity date and securities) must be annexed to the registration form.

Receivables sold under the same sale agreement need not have similar characteristics.

4.8 Respect for Intent of Parties; Economic Effects on Sale. If the parties denominate their transaction as a sale and state their intent that it be a sale will this automatically be respected or will a court enquire into the economic characteristics of the transaction? If the latter, what economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; or (d) a right of repurchase/redemption without jeopardising perfection?

Greek courts have the authority to examine the true legal nature of any transaction (most commonly ruling whether claims are assigned genuinely or by way of security).

The Securitisation Law requires the sale of the receivables to invoke the applicability of Greek Civil Code provisions on sale of goods; this requirement is further enhanced for banking receivables' securitisations, where the true sale character of the transaction is assessed pursuant to specific requirements set out by the Bank of Greece. A sale by way of security is incompatible with the abovementioned structure.

Under the Securitisation Law, collection and administration of the transferred claims may be effected by the seller in its capacity as servicer (such structure being the market practice); alternatively, the servicing of the receivables portfolio may be assigned to a credit/financial institution of the EEA (that must have a permanent establishment in Greece, if the receivables are obligations of consumers, payable in Greece) or a third party which has either guaranteed or had undertaken collection of the receivables prior to the completion of the securitisation. The appointment of the servicer must be registered with the competent registry. The purchaser has the right to sell-back all or part of the securitised receivables under the provisions (and using the benefits) of the Securitisation Law, such right not jeopardising perfection of the initial sale.

4.9 Continuous Sales of Receivables. Can the seller agree in an enforceable manner (at least prior to its insolvency) to continuous sales of receivables (i.e., sales of receivables as and when they arise)?

Subject to the relevant formalities being complied with, continuous transfer is possible whether under simple sale and assignment or pursuant to a securitisation transaction. Please see above question 4.7 as regards the description of receivables.

4.10 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., “future flow” securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to or after the seller’s insolvency?

Question 4.9 applies accordingly, subject to identification of transferred receivables (see question 4.7). If the receivables arise from a legal relationship that is created post declaration of the seller under bankruptcy, it is uncertain whether the transaction will be ring-fenced against the effects of insolvency.

4.11 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Question 4.3 applies accordingly.

The formalities required for the creation of a security interest must be repeated to perfect their transfer (i.e. (a) registration of the change of the beneficiary of a mortgage/prenotation of mortgage with the competent land registry, (b) endorsement of marketable instruments, (c) court bailiff service of a pledge over receivables, or (d) registration of floating charge/equipment pledge).

Under the Securitisation Law, the security interests that are ancillary to the transferred receivables are deemed to be transferred to the purchaser; change of the beneficiary of mortgages or other *in rem* rights, that must be registered with a public record under applicable law, is effected by registration of the certification of registration of the receivables sale agreement form with the competent registry.

5 Security Issues

5.1 Back-up Security. Is it customary in Greece to take a “back-up” security interest over the seller’s ownership interest in the receivables and the related security, in the event that the sale is deemed by a court not to have been perfected?

No, it is not.

5.2 Seller Security. If so, what are the formalities for the seller granting a security interest in receivables and related security under the laws of Greece, and for such security interest to be perfected?

This is not applicable – please see question 5.1 above.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in Greece to grant and perfect a security interest in purchased receivables governed by the laws of Greece and the related security?

Security over receivables (i.e. pledge of claims) is perfected through notice of the pledge agreement to the obligor (for the relevant formalities, see question 4.11 above).

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of Greece, and that security interest is valid and perfected under the laws of the purchaser’s country, will it be treated as valid and perfected in Greece or must additional steps be taken in Greece?

Whilst the contractual terms of the security agreement may be governed by foreign law, the perfection of the security on a Greek law receivable must be governed by Greek law. Therefore, our response to question 3.1 applies also on the perfection of security interests.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

See questions 4.11 and 5.3 that also apply for the perfection of security interests on such instruments/receivables.

5.6 Trusts. Does Greece recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller’s own assets until turned over to the purchaser?

Greek law does not recognise division between legal and beneficial ownership. Thus, the institution of trust is not recognised as such.

As regards collection of the securitised receivables, the seller may collect them in its capacity as servicer (see question 4.8). Given the true sale nature of the transaction and the authorisations contained in the servicer appointment agreement, the transferred receivables are property of the purchaser administered by the servicer.

5.7 Bank Accounts. Does Greece recognise escrow accounts? Can security be taken over a bank account located in Greece? If so, what is the typical method? Would courts in Greece recognise a foreign-law grant of security (for example, an English law debenture) taken over a bank account located in Greece?

Escrow accounts are acknowledged under Greek law as a contractual undertaking (account holder name, movement of funds, signing rights to be provided in a relevant contract), without having an *erga omnes* effect, as opposed to an account pledge. In the event that enforcement measures are initiated against the escrow account or its holder, monies deposited therein are not ring-fenced. For account pledge formalities, see question 5.3 above. For foreign law security agreements, see question 5.4.

As regards securitisations, the account where payments are made under the transferred receivables is a segregated account, pledged in favour of the securitisation noteholders and other creditors, that is held with the servicer and it is ring-fenced against enforcement and insolvency procedures raised against the servicer.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

Salaries, pensions and social security benefits deposited directly in

the obligor's bank account are exempted from attachment in the hands of a third party (i.e. of the bank in which such amounts are deposited). The exemption covers the amounts deposited up to the amount of the salary, pension, and social security benefit each time deposited. Any excess credit balance in the account may be attached.

Special provisions apply with regard to financial collateral arrangements on bank account deposits.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

Yes, save as otherwise agreed by the parties.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will Greek insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

Automatic stay is not provided under Greek insolvency laws. Subject to clawback provisions, the transfer of claims under the general provisions of the GCC (that is validly perfected before the declaration of bankruptcy) is not affected by the seller's subsequent bankruptcy. Therefore, the bankruptcy administrator will not be entitled to validly request an injunction against the purchaser to force it to stay collections.

The same apply as regards receivables securitisations; it should be noted that under the Securitisation Law, upon registration of the receivables sale agreement form with the competent registry, the validity of the sale of the receivables (including future ones) and ancillary rights thereto, the establishment of the legal pledge on the collection account and of any security in favour of the purchaser's creditors is ring-fenced against the bankruptcy (including clawback) of the seller.

If the purchaser is deemed to be a secured party and not a true owner of the receivables, then the Securitisation Law protections will not be applicable (as they do not apply to transactions where the securitisation is entered into as a means of security) and the first paragraph of this answer (on GCC sales) will apply.

6.2 Insolvency Official's Powers. If there is no stay of action under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of rights (by means of injunction, stay order or other action)?

Kindly refer to question 6.1 above.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the insolvency proceeding? What are the lengths of the "suspect" or "preference" periods in Greece for (a) transactions between unrelated parties and (b) transactions between related parties?

Clawback provisions apply to both related and unrelated party transactions. The "suspect period" is set by the bankruptcy court and may start as early as two years prior to the declaration of bankruptcy by the court. If, during the last 5 years before the declaration of bankruptcy, the bankrupt entity entered into transactions with intent to cause damage to its creditors or to favour some against others, and its counterparty was acting in bad faith, such transactions are revocable. Revocation of transactions may be mandatory or optional, depending on their characteristics.

Kindly refer to question 6.1 on the special ring-fencing regime under the Securitisation Law.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding?

The insolvency official is not entitled to consolidate assets of the purchaser with those of the seller, unless such assets are subject to the clawback provisions discussed under question 6.3 above.

6.5 Effect of Proceedings on Future Receivables. If insolvency proceedings are commenced against the seller in Greece, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

Under the Securitisation Law, the commencement of any insolvency proceedings which may incur a prohibition of or restrictions to the right of, among others, the seller to dispose of the securitised receivables does not affect the validity of the sale and transfer of such receivables. The same applies to future receivables which are generated after the commencement of the said proceedings.

[For as long as the notification of assignment or registration of the securitisation is pending, the receivables form part of the bankruptcy property. Same applies to future receivables whose status does not permit identification thereof (see question 4.7 above).]

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in Greece establishing a legal framework for securitisation transactions? If so, what are the basics?

Greece has introduced a special law governing the securitisation of commercial receivables (which include banking receivables) and real estate (the Securitisation Law). In addition, a separate law governs the securitisation of state sector receivables. The Securitisation Law provides for the sale of receivables to special

purpose vehicles, established either in Greece or elsewhere. The purchase of the receivables is funded by the issuance of a bond loan by the spv. The transaction (along with the appointment of a servicer) is registered with the competent registry and benefits from favourable tax regime and enhanced protection against insolvency/enforcement procedures against the seller and the servicer (see above).

7.2 Securitisation Entities. Does Greece have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

Under the Securitisation Law, a Greek law spv is established as a *societe anonyme* with registered shares. The company's primary corporate body is the shareholders' general assembly whilst management is carried out by a BoD of at least 3 members. Publicity of certain corporate acts and several accounting obligations must be complied with. Shareholders' liability is limited to their participation in the company. The Securitisation Law does not include any requirements for non-Greek spvs.

If the spv is a wholly owned subsidiary of the seller, issues may be raised regarding the true sale nature of the transaction, regulatory capital obligations of the seller and accounting obligations. In particular as regards banking securitisations, spvs are usually orphan vehicles established under English law; solo consolidation of such spvs with the originating bank is mandatory under International Accounting Standards; such accounting treatment is irrelevant for capital relief purposes.

7.3 Non-Recourse Clause. Will a court in Greece give effect to a contractual provision (even if the contract's governing law is the law of another country) limiting the recourse of parties to available funds?

In case the contract's governing law is Greek, such choice would in principle be accepted by Greek courts, subject to the restrictions mentioned above under question 2.3.

Whether a contractual provision limiting the recourse rights under foreign law will be found valid and binding by Greek courts depends on the content of such provision and the particularities of the case.

7.4 Non-Petition Clause. Will a court in Greece give effect to a contractual provision (even if the contract's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

Please see our answer under question 7.3 above.

7.5 Priority of Payments "Waterfall". Will a court in Greece give effect to a contractual provision (even if the contract's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

No. Greek law provisions regulating payments "waterfall" in enforcement procedures are deemed to be overriding mandatory provisions and will thus prevail, under article 9 of Rome I, over all

contrary contractual provisions. Please see our answer under questions 2.1 and 2.3 above.

7.6 Independent Director. Will a court in Greece give effect to a contractual provision (even if the contract's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

Greek courts will recognise and apply foreign law contracts or foreign court decisions to the extent not contrary to public order provisions of Greek law. *Societe anonyme* companies are to be treated as fully autonomous entities and, as such, their corporate bodies must pursue the company's corporate interest (failure to do so will incur civil and criminal liabilities – especially as regards the requirement to commence bankruptcy proceedings in case the company is permanently insolvent). Consequently, the described contractual arrangement must prove to serve corporate interest and not deprive its corporate bodies from their powers.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in Greece, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in Greece? Does the answer to the preceding question change if the purchaser does business with other sellers in Greece?

Under Greek law it is not necessary that the purchaser should be or have been licensed, qualified or otherwise entitled to carry on business in Greece in order to be able to enforce its rights deriving from the securitisation transaction, nor will it be subject to regulation as a financial institution in Greece.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

No licence is required for the seller to continue to enforce and collect receivables, in its capacity as servicer, following their sale to the purchaser.

A summary of the servicing agreement containing the basic provisions thereof must be registered with the competent registry. The service agreement form should be filled in and submitted each time a servicer (including a replacement servicer) is appointed.

In case the securitised receivables are claims against consumers payable in Greece, the servicer must have a permanent establishment in Greece.

Under Greek law, a non-lawyer cannot appear before a Greek court in the name and on behalf of the claimant (or defendant); therefore, the seller (in its capacity as servicer) may authorise a competent lawyer, so that the latter can act on behalf of the purchaser before Greek courts.

The replacement servicer must have the same characteristics as the initial servicer, namely it must be a credit/financial institution of the

EEA or a third party which has either guaranteed or had undertaken collection of the receivables prior to the securitisation thereof.

8.3 Data Protection. Does Greece have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

Greece has transposed EU data protection directives. In general, in Greece, the dissemination of personal data, and of data related to financial behaviour in particular, is restricted through several laws (e.g. laws 2472/1197 and 3471/2006, secondary legislation issued by the Data Protection Authority (DPA), etc.). The processing of data for the purposes of a securitisation transaction must comply with the legislation as in force; however, pursuant to the Securitisation Law such processing does not require prior approval by the DPA or any prior consent by the obligors. The seller may give to the purchaser any data related to the receivables transferred and/or the relevant obligors; so may the purchaser to the bondholders, their representatives and/or the persons participating in the securitisation transaction.

Data protection legislation applies only to natural persons.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of Greece? Briefly, what is required?

Yes, the purchaser must comply with all relevant Greek consumer protection laws. For banking receivables, such protections relate to the unilateral change of the interest rates of the receivables, restrictions on enforcement, as well as restrictions and/or requirements for termination of a loan/credit agreement.

Pursuant to law 2251/1994 on consumer protection, consumer protection legislation may also apply to legal entities.

8.5 Currency Restrictions. Does Greece have laws restricting the exchange of Greek currency for other currencies or the making of payments in Greek currency to persons outside the country?

No, it does not. Please note that banking institutions are subject to certain notification and/or report obligations to the Bank of Greece with respect to transfer of funds as well as to obligations for the avoidance of money laundering. The Bank of Greece may conduct controls to ensure that the respective reporting obligations are complied with and impose fines or penalties in case of breach thereof.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in Greece? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located?

In general, payment of interest in Greece to non-Greek beneficiaries will be subject to withholding tax. Whether such tax will be applicable depends on the tax residence of the purchaser and the

obligors, the nature of the receivables and the existence of a double taxation treaty between Greece and the country of tax residence of the purchaser.

9.2 Seller Tax Accounting. Does Greece require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

In particular as regards banking securitisations, spvs are usually orphan vehicles established under English law; solo consolidation of such spvs with the originating bank/seller is mandatory under International Accounting Standards (but not under Greek accounting principles); such accounting treatment is irrelevant for capital relief purposes.

9.3 Stamp Duty, etc. Does Greece impose stamp duty or other documentary taxes on sales of receivables?

No, the sale and transfer of receivables pursuant to the Securitisation Law is exempted from all direct or indirect taxes, including stamp duty.

9.4 Value Added Taxes. Does Greece impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

Securitisation transactions are exempted from all direct and indirect Greek law taxation. VAT will be applicable on the servicing agreement, if the servicer is not the originator of the receivables of the securitisation portfolio.

9.5 Purchaser Liability. If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

No, the purchaser is not liable for any of the taxation obligations of the seller. Notwithstanding the above, the seller and the purchaser are jointly liable to pay to the Bank of Greece all moneys they collect under the securitised receivables that correspond to the levy of law 128/1975; this levy is imposed on the interest computed under banking loan agreements and it is –under current and past practise– transferred by the banks to the obligors of the loans.

9.6 Doing Business. Assuming that the purchaser conducts no other business in Greece, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in Greece?

According to the prevailing legal theory, no. In addition, we are not aware of any case where the Greek tax authorities have considered that any of the purchasers of Greek securitisations are deemed to have a permanent establishment in Greece solely on the basis of the transactions foreseen under the securitisation transaction documentation.



Christina Papanikolopoulou

KG Law Firm
28 Dimitriou Soutsou Street
115 21 Athens
Greece

Tel: +30 210 817 1500
Fax: +30 210 685 6657-8
Email: c.papanikolopoulou@kgdi.gr
URL: www.kgdi.gr

Christina's main area of practice is debt and equity capital markets, general bank debt finance, securitisation and structured finance and regulation of financial institutions. Christina has led the KG team on various securities offerings by companies listed on the Athens Exchange, most of which were combined, as well as on accelerated bookbuildings and similar transactions. She has also advised clients on securitisation and covered bond transactions launched by Greek originators. She provides advice to financial institutions regarding their day-to-day operations and specialised projects with emphasis on transactions where international partners are involved. In the corporate sector, Christina has advised on transactions in a variety of industries (such as energy, construction and real estate). Christina is a Member of the Athens Bar Association, the Hellenic Commercial Lawyers Association, the Hellenic Society of Banking and Capital Markets, and the International Bar Association. She also has been ranked as a "Leading Lawyer" in the IFLR1000 for 2011, 2012 and 2013.



Athina Diamanti

KG Law Firm
28 Dimitriou Soutsou Street
115 21 Athens
Greece

Tel: +30 210 817 1500
Fax: +30 210 685 6657-8
Email: a.diamanti@kgdi.gr
URL: www.kgdi.gr

Athina Diamanti joined KG in February 2010 and specialises in European and Greek banking law, structured finance and capital markets transactions. Her area of practice also includes corporate and company law. She has recently been involved in securitisation and covered bond transactions as well as in capital increases of Greek banks and has worked in the merger of two Greek banks.



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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
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