



ICLG

The International Comparative Legal Guide to:

Real Estate 2013

8th Edition

A practical cross-border insight into real estate law

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EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Real Estate*.

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

It is divided into two main sections:

One general chapter. This chapter looks at non-performing loans in the CEE/SEE region.

Country question and answer chapters. These provide a broad overview of common issues in real estate laws and regulations in 39 jurisdictions.

All chapters are written by leading real estate lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Lagler of Schoenherr, 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

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1 Real Estate Law

- 1.1 Please briefly describe the main laws that govern real estate in Greece. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

In Greece, the principal law that governs real estate is the Law of Real Property (rights *in rem*), constituting a chapter of the Civil Code (Articles 947 to 1345). In addition, real estate law is additionally included in various statutes, such as by way of indication:

- *Land Registry/Cadastral Provisions*: Legislative Decree 19/23.07.1941, Law 1647/1986, Law 2308/1995 and Law 2664/1998, as in force;
- *Forestry Provisions*: Legislative Decree 86/1969 re: Forest Code, Law 998/1979, Law 1734/1987 and Law 3208/2003, as in force, Law 3889/2010;
- *Land Partition and Reallocation Provisions*: Articles 16 and 20 of Legislative Decree 17.07.1923, Compulsory Law 431/1968, Law 3147/2003, Law 651/1977, Law 720/1977, Law 1337/1983, Law 2442/1994, Law 2508/1997, Law 2637/1998, Law 3147/2003, Ministerial Decision 168/2010 as in force, and Law 3212/2003;
- *Real Estate Investments Mutual Funds/Real Estate Collective Investment Companies*: Law 2778/99 and Law 1969/91, as amended, Law 3894/2010;
- *Real Estate Leasing*: Law 1665/1986;
- *Public Real Estate Property Provisions*: Legislative Decree 16/1926, A.N. 1539/1938, A.N. 263/1968, N.973/1979;
- *Expropriation Provisions*: A.N. 1731/1939, Legislative Decree 797/1971, Law 2882/2001; and
- *Settlement of Illegal Buildings*: Law 4014/2011 as amended.

- 1.2 What is the impact (if any) on real estate of local common law in Greece?**

Given that Greece is a civil law country, real estate matters are regulated by statutes and legislative regulations. Court case law is only used as a method of interpreting such provisions.

- 1.3 Are international laws relevant to real estate in Greece? Please ignore EU legislation enacted locally in EU countries.**

International laws are not relevant to real estate in Greece. Any

disputes concerning rights *in rem* fall within the jurisdiction of the competent Greek courts of the periphery of the property in question, regardless of the domicile of the defendant. According to EU Regulation 44/2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State.

2 Ownership

- 2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

Law 1892/1990, as amended by Law 3978/2011 and as in force, provides restrictions for the acquisition of property rights in border zones of the country by individuals or companies that are not nationals of a European Union (EU) or European Free Trade Association (EFTA) country and for the transfer of company parts or shares or any change of partners of the companies that have ownership rights over assets located within such border zones. Such persons must apply to a special committee to obtain permission before acquiring or renting the real estate or before proceeding to any shareholders' structure change. The transaction is null and void unless the purchaser/company obtains the above permission.

3 Real Estate Rights

- 3.1 What are the types of rights over land recognised in Greece? Are any of them purely contractual between the parties?**

Greek Law recognises the following rights *in rem* over land: (a) ownership (full ownership and bare ownership); (b) real and personal easements (e.g. right of way, usufruct); (c) mortgage (charge) over real estate, as security in favour of creditors; and (d) "surface right", introduced by Law 3986/2011 conferring a right to use real estate owned by the Greek State, Public Law Entities and State Agencies, for a period of time ranging from 5 to 50 years.

Apart from the above rights *in rem*, various purely contractual rights can be acquired over land (e.g. lease agreement, use free of charge - "free-on-loan", etc.).

3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?

Yes, in the case of “surface right” where the right to building is conferred to a third party, who is not the owner of the land (article 19 of law 3986/2011).

4 System of Registration

4.1 Is all land in Greece required to be registered? What land (or rights) are unregistered?

All rights *in rem* over land are compulsorily registrable (see also question 4.3 below). On the other hand, contractual rights over land (e.g. use “free-on-loan”, etc.) are not registrable with the exception of long term leases contractually concluded. Greece operates, in parallel, two registration systems of rights *in rem* (for more details see question 5.1 below):

- Pursuant to the system of Transcriptions and Mortgages Books, which currently applies in the majority of the Greek territory, rights over land are subject to registration (and not the land itself) in local Land Registries in the entries of the owners.
- Since 1995, Greece has been in the process of implementing a National Cadastre system. In the parts of Greece where the National Cadastre has been implemented, rights *in rem* must be recorded with the relevant cadastral office. Upon the date of operation of each cadastral office, transactions *in rem* relating to each single plot (cadastral parcel) are registered in the relevant cadastral plot entry granted with a cadastral registration number.

It should be noted that rights *in rem* over land may also be acquired through the informal process of adverse possession (acquisitive prescription), i.e. possession over a specified period of time (e.g. the lapse of twenty years in the case of extraordinary adverse possession which presupposes possession over the land in bad faith and the lapse of ten years in the case of ordinary adverse possession which presupposes possession over the concerned in good faith). In the case of adverse possession, there is usually no registration procedure (that’s why adverse possession does not constitute a valid legal title, since acquisition of ownership rights cannot occur unless the predecessors account for their ownership titles for a period of at least twenty years), unless (as mentioned in question 4.4 below) the formal recognition of such right is sought and obtained by a court decision, which is then registered in the Transcriptions and Mortgages Books of the local Land Registry or with the entries of the competent cadastral office.

4.2 Is there a state guarantee of title? What does it guarantee?

There is no State guarantee of title (see also question 5.3 below).

4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

As mentioned under question 4.1 above, all rights *in rem* over land are compulsorily registrable, especially those contractually acquired/transferred (such as *in rem* transactions, post mortem donations, court decisions pronouncing ownership rights or other *in rem* rights over assets, partitioning agreements, acceptance of inheritance deeds, court decisions pronouncing the acquisition of ownership rights through extraordinary adverse possession, rural expropriation decisions, implementation acts of the town plan, etc.).

The registration with the Land Registry and/or the Cadastral Office (as the case may be) is a prerequisite for the perfection of a real estate transaction (i.e., the transfer of ownership or other *in rem* rights). Therefore, lack of registration results in the non-transfer of ownership or in the non-creation or non-abolition of a right *in rem* over immovable property.

A lease over real estate for a duration exceeding nine (9) years is only valid *vis-à-vis* the new owner of such real estate if the lease has been drawn up in the form of a notarial deed and has been registered with the Land Registry. Such registration is not compulsory, but affords the tenant the above protection against any new owner.

Exceptionally, such registration is not required in case of commercial leases, that fall within the scope of the presidential decree 34/1995, where the lease agreement is binding and produces full legal effects *vis-à-vis* the new owner of the plot, irrespective of whether or not such lease agreement has been registered with the competent Land Registry or Cadastral Office.

4.4 What rights in land are not required to be registered?

As mentioned in question 4.1 above, rights *in rem* over land acquired through acquisitive prescription are not usually registered in the Land Registry, but must be registered with the National Cadastre. Contractual rights (as opposed to rights *in rem*) are also not registered with the Land Registry with the exception of long-term non-commercial lease agreements. Expropriations declared for public interest do not need to be registered with either the Land Registry or the National Cadastre; thus, ownership rights are transferred to the beneficiary of the expropriation [usually a public (or private) entity in favour of which the expropriation has been declared, such as school organisations, a National Tourist Organization, etc.] as of the date of payment of the compensation amount to the ex-owners of the expropriated parcels. Only rural expropriations are required to be registered with the competent Land Registry.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

As per the system of the Land Registries, there is no probationary period following first registration for ownership rights, thus registration becomes effective as of the date of its completion. Nevertheless, the registration of ownership rights does not produce any irrefutable evidence of such rights. As far as the National Cadastre is concerned, registration of ownership rights or other *in rem* rights produces irrefutable evidence of such ownership rights after the lapse of approximately a ten-year period after the first declaration has taken place.

Mortgages are registered based on chronological priority. For more details see question 4.7 below.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

On a land sale, ownership rights are transferred to the buyer upon the registration of the sale and purchase agreement (notarial deed) with the Land Registry or the Cadastral Office, located in the district where the land is situated. However, valid acquisition of the

ownership rights of the predecessor of the buyer (i.e., of the seller) is a prerequisite for the valid transfer of ownership rights to the buyer.

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

The principle of priority of mortgages awards preferential satisfaction to the mortgagee (creditor) whose right was registered first, in the event that multiple mortgages are registered over the same real estate. Mortgages registered on the same day are satisfied *pro rata*.

Furthermore, if at the time at which a usufruct right is constituted, the real estate is already charged with a mortgage, the mortgage takes priority over the usufruct in accordance with the principle of priority. If, to the contrary, the mortgage is registered after the constitution of the usufruct, then the mortgage extends only to the bare ownership.

5 The Registry / Registries

5.1 How many land registries operate in Greece? If more than one please specify their differing rules and requirements.

There are two systems of publicity of rights *in rem* over immovables: (a) the Transcriptions and Mortgages Books in the Land Registry Offices; and (b) the National Cadastre (and/or the Cadastral Offices, which operate in the interim period before the entry into force of the National Cadastre), which is currently incomplete but aims to replace the system of Transcriptions and Mortgages Books in the future.

The main differences between the two systems are:

- The Transcriptions and Mortgages Books scheme is based on the keeping of an index of the persons who have concluded real estate transactions regarding immovables (personal accounts), while under the Cadastre scheme an index of the real estate itself is kept and every property has its own account (Cadastre account). Therefore the cadastral plot is attributed a separate cadastral registration number.
- As already mentioned under question 4.5 above, contrary to registrations made according to the Transcriptions and Mortgages system, registrations contained in the Cadastre create a legal presumption that the legal status of the immovable recorded is true and accurate.

5.2 Does the land registry issue a physical title document to the owners of registered real estate?

A certificate of ownership is issued by the local Land Registry, as well as by the National Cadastre (provided that the National Cadastre has been implemented in the relevant area).

5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

No transaction relating to registered real estate can be completed electronically. The local Land Registry office will proceed with the registration upon submission of the relevant notarial deed, a summary of the deed, a registration request, a tax declaration and

the corresponding registration fees. Information on real estate ownership can only be accessed through on site visits to the Land Registry offices or to the Cadastral offices (as the case may be).

5.4 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Compensation can be claimed from the Registrar or the Greek State, depending on the applicable system of publicity. Specifically, according to the system of Transcriptions and Mortgages Books, liability exists only in very rare cases, which are specified in the law, and the Registrar is liable for compensation for any act or omission related to the fulfilment of its obligations (i.e. refusal of registration of a registerable deed without reason). On the contrary, under the Cadastre system, liability arises in any event that a party suffers damages due to the operation of the Cadastre system, and it is the Greek State which is liable for compensation.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

The Registrar of the Land Registry or of the Cadastral Office is obliged by law to place the Transcriptions Books or the Cadastral Leafs at the disposal of anyone who wishes to review them. However, the due diligence of the title deeds prior to a transaction may only be undertaken (land titles assessed) by a lawyer. Furthermore, a buyer should also obtain information regarding the property's legal status from the local Town Planning Authority and Forestry Authority.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Greece? Please briefly describe their roles and/or duties.

a) Real estate agents

There is no legal obligation to employ an agent for the conclusion of a real estate transaction, although this is often the case.

b) Notaries

All agreements and acts concerning the transfer of rights *in rem* over real estate must be executed in the form of a notarial deed.

c) Lawyers

Each contracting party must be represented by a lawyer before the Notary Public for the execution of those real estate deeds exceeding a certain value.

The lawyers' attendance must be specifically referred to in the Notarial Deed, whilst a draft of the deed, signed by the lawyers, must be attached thereto.

d) Civil engineers

Topographic drawings signed by the contracting parties and the civil engineer who has drafted them must be attached to all transfer deeds of real estate property. In such topographic diagram, an affidavit should be signed by the civil engineer with regards to the compliance of the building or the character of the plot with the building restrictions in force in the area.

A certificate regarding the non-existence of illegal buildings must be attached to the transfer deed.

An energy certificate in case of the transfer or lease of real estate property exceeding 50 sq.m in surface must also be attached to the transfer deed or the lease agreement.

6.2 How and on what basis are these persons remunerated?

a) Real estate agents

Their fees are established by agreement between the parties and are usually a percentage of the value of the transaction (the higher of the declared value of the real estate and its “objective” value imputed by the tax authorities).

b) Notaries

Notaries’ remuneration is calculated as a percentage of the value of the transaction (the higher of the declared value of the real estate and its “objective” value imputed by the tax authorities).

c) Lawyers

Their fees are established by agreement between the parties.

d) Civil engineers

Their fees are established by agreement between the parties. In the absence of agreement, minimum statutory fees apply.

6.3 How has the real estate market in Greece recovered or reacted following the global credit crunch and worldwide recession in 2008/2010? What were the most important real estate transactions in Greece in the past year? Please include both local and international investors in your answer.

The Greek real estate market has been significantly affected by the credit crunch and economic uncertainty in Greece. This has been reflected in the radical drop in the real estate transactions and investments. According to an article published in the Greek daily newspaper “Kathimerini” (7 May 2012), the situation in the real estate market is described as follows:

- real estate investments in Greece have fallen by 23% in 2011, while according to same estimations for 2012 a reduction of 17% is being anticipated; and
- within 2012 it is anticipated that the total amount in real estate investments won’t exceed EUR 6 billion, while the same amount in 2011 was EUR 7.2 billion, in 2010 EUR 9.6 billion and in 2006 EUR 23.8 billion.

Another daily Greek newspaper, “Ta Nea”, in its article of 18 August 2012, presented data retrieved by the Athens Notary Bar and the National Bank of Greece concerning real estate sales conducted within the last two years and the respective price formation. It concluded that in 2011 the real estate sales were reduced by 57.72%, while within the first semester of 2012 the prices have fallen by 9.3% on average.

The most significant real estate transactions involved the completion of shopping mall projects which had been planned before the credit crunch, such as the McArthurGlen Designer Outlet in Athens in 2011.

6.4 Is there a trend in Greece towards the investment in retirement homes / nursing homes due to the increased ageing of the population?

We are not aware of any such trend.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

The minimum prerequisites for the transfer of ownership of real estate are: (a) the drafting and signing of the relevant notarial deed by the contracting parties; (b) the payment of the contractual price, otherwise the sale contract and the transfer of ownership rights may be reversed; and (c) the registration of such deed with the Land Registry of the district where the real estate is situated. In addition, payment of the corresponding transfer tax is also a prerequisite for the transfer.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

In addition to the general provisions of the Civil Code on the Sale of Goods, the seller solemnly states in the notarial deed that he warrants and guarantees that the property is free from any encumbrance, debt, mortgage, provisional mortgage (“prenotation” of mortgage), confiscation, claim by any third party, other legal and real defects, lease, assignment of use by any means, expropriations, contribution of land and any debts to the tax and other public authorities.

7.3 Can the seller be liable to the buyer for misrepresentation?

The seller may be liable to the buyer for misrepresentation under the provisions regarding: (a) tort; (b) civil and criminal fraud; (c) knowingly making false declarations; (d) liability arising from negotiations; (e) warranties and representations; and (f) defects pursuant to the relevant provisions of the Greek Civil Code regulating the Sale of Goods.

The enforcement of the above provisions may result in claims for compensation, annulment of the contract, reduction of the sale price and/or criminal liability for the seller.

7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

The seller’s liability for the warranties and guarantees mentioned under question 7.2 above can be mitigated by the buyer’s lack of diligence in checking the legal and actual status of the property being transferred.

7.5 Does the seller warrant its ownership in any way? Please give details.

The seller typically warrants and guarantees to the purchaser his rights *in rem* over the property; such statement being recorded in the notarial deed. As part of the standard due diligence process, the purchaser should require from the seller certificates evidencing ownership of the property, issued by the competent Land Registry and a full series of ownership titles of its own predecessors covering at least a twenty-year period starting from the last ownership title.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

The purchaser is also obliged to pay the corresponding transfer tax. The buyer should also arrange the registration of the sale and purchase transfer deed with the pertinent Land Registry and/or Cadastral Office upon payment of the relevant registration fee (see also questions 4.1 and 4.3 above).

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

No specific regulations exist. There are no different rules as between resident and non-resident persons (see question 2.1 above) and/or between individual persons and corporate entities.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

A real estate lender seeks to protect itself mainly by requiring the borrower to grant a mortgage right over the plot in question owned by it or a provisional mortgage (“prenotation of mortgage”). The mortgage or “prenotation of mortgage” must be registered with the local Land Registry in order to take effect. A “prenotation of mortgage” attracts significantly lower registration fees and may be subsequently converted to a full-blown mortgage upon payment of the higher fees and the issuance of a court decision acknowledging the existence of the relevant debt arising from the loan.

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

The realisation of mortgaged properties may only be effected through enforcement of the mortgage by public auction. The mortgagee may not simply take ownership of the property.

8.4 What minimum formalities are required for real estate lending?

The main formality required is evidence that the borrower is the owner of the real estate. Legal right of ownership and legal title over the asset are presumed by the notarial deed, as registered with the local Land Registry. Extracts from such Registry are considered public documents. The lender bank, in its turn, usually performs a full due diligence review of the ownership titles of the borrower’s predecessor for a twenty-year period of time, in order to ensure that in case of legal flaws of any land title, acquisition of ownership rights has occurred through (extraordinary) adverse possession. Unless the lender requires specific requirements to be met, no specific legal requirements exist. In practice, the lender will typically require that a first rank mortgage be registered over the property prior to disbursement of the loan.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

Lenders have no special protection privileges over other creditors. The protection is created by establishing a mortgage over the real property provided it is registered. According to the legal principle “*prior in tempore prior in jure*”, the first-ranking mortgage defeats any subsequent and the lenders are entitled to the proceeds from the auction of the real estate according to the ranking of their mortgage and in priority over any unsecured lenders.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The transfer of the real estate title against consideration is subject to real estate transfer tax (RETT). The tax is borne by the buyer and its rates are 8% for the first €20,000 and 10% for any excess. An additional tax in favour of the municipality is also levied at a rate of 3% of the real estate transfer tax. The tax is assessed on the higher of the declared value and the “objective” value, as imputed by the tax authorities. The objective value is based on the zone values that are specified by the Ministry of Finance, from time-to-time.

Under certain circumstances, full or partial exemption from RETT may be obtained (e.g. purchase of primary residence).

It should be noted that the donation and inheritance of real estate located in Greece is subject to donation and inheritance tax; under certain circumstances VAT is imposed on real estate transfers as noted in question 9.4.

9.2 When is the transfer tax paid?

RETT must be paid fully together with the submission of a tax return prior to the execution of the transfer deed. The relevant receipt of the tax payment must be attached to the notarial deed.

9.3 Are transfers of real estate by individuals subject to income tax?

Transfers of real estate by individuals are not subject to income tax.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

The sale of buildings by constructors, for which the building permit was issued or renewed after 1 January 2006 (“new buildings”), together with the percentage of land corresponding thereto, is subject to VAT. The Law offers the possibility to individuals or legal entities that do not carry on the business of the erection and sale of buildings to be subject to the standard VAT regime in order to be entitled to deduct input VAT which will burden the erection of the building. The tax is generally due upon execution of the final deed of transfer by the constructor.

Buildings which are not considered new, as well as the acquisition of a primary residence, are exempt from VAT.

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

The buyer is liable for the tax due at the time of the property purchase, as listed both in questions 9.1 and 9.4.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

The tax treatment of the transfer of ownership of a company owning real estate depends on the company's legal form.

For example, in the case of the sale of shares of a corporation (*societe anonyme*) not listed on the Athens Exchange, a 5% transfer tax is imposed on the higher contractual sale price and the "objective" value of such shares, as imputed by the tax authorities on the basis of a specific formula. The transfer tax, however, is 20% in the case of the sale of parts in a partnership or a limited liability company; again the taxable basis is determined in a similar way (i.e. the basis of a specific formula). In both cases, the positive difference between the objective value and the acquisition value of the real estate is taken into account for the calculation of the taxable basis.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

Leases of business premises (rental agreements) are regulated by Presidential Decree 34/1995, as in force and as amended by Law 3853/2010, which applies in parallel with the provisions of the Civil Code.

10.2 What types of business lease exist?

The leases of business premises fall within two categories: (a) leases pertaining to certain commercial activities protected by law (e.g. trade premises, educational institutions, clinics and hospitals, etc.); and (b) leases pertaining to certain protected professions (e.g. law offices, doctors' private practices, offices of architects and civil engineers, notarial offices, etc.).

10.3 What are the typical provisions for leases of business premises in Greece regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

a) Length of term

Business leases are of a compulsory duration of twelve (12) years, even if the parties have contractually agreed a shorter term or an indefinite term. Under certain conditions, the tenant may extend the lease for an additional four (4) years, as long as the lessor does not seek return of the property within nine months from the expiry of the lease.

b) Rent increases

In the absence of a contractual agreement on rent increases, the landlord may claim a readjustment after the lapse of two years from the execution of the contract and this is determined as a percentage per annum not lower than 6% of the "objective" value of the premises (as assigned by tax authorities), 4% for the open spaces of the premises, and in those areas of the country where the objective system is not applied, it is calculated on the basis of its market value. In case of a dispute arising between the parties on the readjustment price, the special Settlement of Rent Readjustment Commissions introduced by Law 4013/2011 are relevant.

c) Tenant's right to sell or sub-lease

A tenant does not have the right to sell the property. In principle, and unless otherwise provided in the agreement, the assignment of use in whole or in part, of leased premises (with or without consideration) to a third party is not allowed. Under certain conditions, tenants may sublet property (i.e. after the lapse of three years starting from the date of the conclusion of the lease) or grant use of a leased property to a partnership or limited liability company of which they are part (the tenant's participation in the company being of at least 35%).

d) Insurance

Insurance of the leased property is not obligatory. In most cases, the landlord is the one who insures his property and pays the premium.

e) (i) Change of control of the tenant

After the 3rd anniversary from the entry into a lease agreement, the tenant is entitled to grant the use of a leased property to a partnership or a limited liability company, of which at least 35% is owned by the tenant. In such a case, the tenant and the partnership/company are jointly and severally liable towards the landlord.

e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

The merger of either the landlord or the tenant company with a third party results in the succession (by operation of law) of the company resulting from the merger to the lease agreement, which agreement shall continue unaltered in all other respects.

f) Repairs

Unless agreed otherwise by the parties, the landlord is obliged to maintain the leased property fit for its intended and agreed use. The landlord is therefore burdened with the costs and expenses of repairs pertaining to the property's basic functions.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Landlords are subject to annual income tax on the net income from rent earned pursuant to a business lease. Net taxable real estate income of individuals, partnerships and foreign entities, which do not have a permanent establishment in Greece, is determined on the basis of special rules, according to which not all expenses (including depreciation) are necessarily taken into account.

In addition, gross rental income is subject to a supplementary tax at the rate of: (i) 1.5% for individuals, which is increased to 3% where the real estate in question is used for residential purposes and exceeds 300 sq.m in surface or is used for professional or commercial lease purposes; and (ii) 3% for legal entities.

In addition, stamp duty is payable on commercial rental income at a rate of 3.6%. This duty must be remitted to the State by the landlord. The parties may agree to allocate or apportion the duty between the landlord and/or the tenant.

Finally an extraordinary special real estate duty has been imposed from 2011 on commercial or residential real estate to which electricity is supplied, provided that such property is subject on the 17th September of every year to the real estate duty in favour of the municipalities. The determination of the payable amount takes into consideration the size (square metre) of the building's surface, the applicable rate of the area where the building is situated (according to the applicable Value Zones) and the age of the building. The special duty is collected by the Public Electricity Company and the alternative electricity suppliers.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

In principle, business leases are automatically terminated on expiry of the *ex jure* (12-year) duration. Premature termination of business leases can only be performed by:

- Subsequent agreement between the parties evidenced by a document bearing a certified date.
- Unilateral termination by the tenant without cause by 3 months' prior written notice to the landlord, provided that the 1st anniversary of the lease has lapsed. In such a case, the tenant must pay the landlord compensation equal to 1 month's rent payable at the time of termination. Law 3853/2010 considers all termination of (commercial) lease agreements emanating from the lessee as being *ipso jure* valid, irrespective of whether or not the lessee had previously waived its right of termination, provided that the lease agreement had been concluded before the entry into force of such law (June 2010) and that the termination occurs before 31.12.2012.
- Unilateral termination by the landlord in the following cases, subject to certain conditions and upon payment of compensation to the tenant:
 - (a) use of the premises by the landlord himself for business purposes unless the lessor has waived its right of termination on this ground through a document bearing a certified date signed, which is posterior to the conclusion of the lease agreement;
 - (b) reconstruction of the leased property by the landlord or the owner of the property unless the lessor has waived its right of termination on this ground through a document bearing a certified date signed, which is posterior to the conclusion of the lease agreement;
 - (c) use of the leased premises as a family home of the landlord or his wife or his adult child unless the lessor has waived its right of termination on this ground through a document bearing a certified date signed, which is posterior to the conclusion of the lease agreement;
 - (d) demolition of a collapsed building;
 - (e) the creation of green areas;
 - (f) installation of municipal and public services; or
 - (g) bankruptcy of the tenant.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?

If the tenant transfers its contractual position to a personal or limited liability company (at least 35% of which must be owned by the tenant), then the tenant remains jointly and severally liable with the above legal entity for the performance of the obligations arising out of the lease contract. Therefore, in such a case, the tenant may be held liable for obligations that arose under the lease prior to the aforesaid transfer.

When a landlord transfers leased premises, the purchaser will generally replace the landlord under the existing lease, thereby assuming the landlord's rights and obligations under the lease. However, the former landlord may remain liable to the purchaser depending on the terms agreed to in the sale contract.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Please see question 11.10 below.

11 Public Law Permits and Obligations

11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.

Urban and land-use planning legislation: The main laws governing zoning matters are: (a) the Urban Development Law (Law 1337/1983); (b) the Sustainable Urban Development Law (Law 2508/1997); (c) the General Construction Regulation (Law 1577/1985); (d) the new General Building Construction Code (Law 4067/2012); and (e) the Law for "Space Planning and Sustainable Development" (Law 2742/1999). The above general framework is supplemented by Law 2831/2000, Law 3212/2003, Law 2882/2001 (as amended by Law 4070/2012) on the Compulsory Expropriation of Real Property, and others containing provisions for particular categories of land (e.g. coastal zones or mountainous areas) or for specific issues, such as Law 3028/2002 on protection of antiquities and Law 998/1979 on protection of forests.

Environmental legislation: According to Article 24 of the Greek Constitution, the protection of the natural and cultural environment is a responsibility of the State. The main law for the protection of the environment is Law 1650/1986, as amended by Law 3010/2002, in order to fully harmonise national legislation with EU Directives 96/61/EC and 97/11/EC. The same issues are also governed by Law 4014/2011.

The majority of environmental legislation in Greece results directly from the incorporation of European Union legislation (e.g. Directives, Regulations, etc.) in national law, with the exception of legislation for the protection of forest ecosystems. In particular: (a) Presidential Decree 165 for the establishment of the Special Service of Environmental Inspectors; (b) Law 3199/2003 on integrated management of water resources; (c) Joint Ministerial Decision 50910/2003 for providing measures and terms for waste management and reviewing the National and Regional Planning Management, in compliance with the European Waste Framework Directive; and (d) Law 3661/2008, as in force, which provides for the issue of an energy certificate that is needed in case of transactions involving buildings exceeding 50 sq.m.

11.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

The State may expropriate real estate if doing so is in the public interest. The State fixes the expropriation which is subject to control by the Court of First Instance, which may either accept it or fix a new price. If the owner of the real estate objects to such price, it may appeal the decision of the Court of First Instance before the Court of Appeal.

11.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

The bodies that control land/building use and/or occupation and environmental regulation are the Technical Departments of the Municipalities, the Environmental Departments of the Peripheries, the Town Planning Authority, the Forest Registry and other Departments of the Ministry of Environment, Energy and Climate Change (YPEKA). The above information is available to interested parties upon submission of a relevant application to the pertinent authority.

11.4 What main permits or licences are required for building works and/or the use of real estate?

The main permits provided in Greek legislation concern construction, demolition, renovation or change of use of real estate.

11.5 Are building/use permits and licences commonly obtained in Greece? Can implied permission be obtained in any way (e.g. by long use)?

Building permits and licences are commonly obtained in Greece. No implied permission can be obtained.

11.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

The cost of building permits depends on the area and the size of the building. See also question 6.2(d) above.

11.7 Are there any regulations on the protection of historic monuments in Greece? If any, when and how are they likely to affect the transfer of rights in real estate?

Law 3028/2002 restricts the development and transfer of land in which antiquities are found, since such land belongs to the State. In particular, all real estate antiquities, which are dated up to 1453 AD, belong to the State and cannot be transferred. Monuments constructed subsequent to 1453 AD are listed and subject to certain construction, use and exploitation restrictions in accordance with Law 1577/1985 which aims to prevent any damage, pollution or deterioration.

11.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in Greece?

No such register exists. A potential buyer will need to conduct his own due diligence on site.

11.9 In what circumstances (if any) is environmental cleanup ever mandatory?

Pursuant to Article 29 of Law 1650/1986, any physical person or legal entity that causes pollution or damage to the environment is liable for indemnification, according to the "polluter pays" principle, unless he/it proves that the damage is due to *force majeure* or to an intentional act of a third person.

11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Greece.

Law 3661/2008 was enacted in order to harmonise national law with European Directive 2002/91 concerning the energy performance of buildings. The adoption of the above law was followed by the issuance of the Building Energy Performance Regulation (Ministerial Decision with nr. D/6/B/5825/09.04.2010), which specified the minimum requirements on the energy performance.

The above legislation requires the submission of an Energy Performance Design with the competent Urban Planning Authorities, as a precondition for the issuance of the necessary licences in case of a building's construction or its radical renovation, irrespective of its surface.

Law 3661/2008 also provides for the issuance of a so-called "energy performance certificate" upon the time of completion of the building's construction or renovation. The above certificate is required for buildings exceeding 50 sq.m and its term can be defined up to ten (10) years. In cases of sale or lease of the above properties, the energy performance certificate should be delivered by the purchaser or the lessor.

12 Climate Change

12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

The emission trading system in Greece functions through the national allowance plans ("NAPS"), under which each country distributes its carbon credits allocation to domestic installations (who can also supplement these credits by purchasing EU and international trading credits). If an installation has performed well at reducing its carbon emissions, it then has the opportunity to sell its credits for a profit, allowing the system to be more self-contained and to be part of the stock exchange without much government intervention.

The final version of the Greek NAPS, issued in April 2008, set out the total emission rights allocated for Greece for the period 2008 to 2012 at 341,547,710 tonnes of CO₂, all of which were allocated free of charge. A decision was made in early 2011 to auction 10,000,000 unallocated emission rights units ("EUA").

From January 2013, a number of changes to the current trading scheme shall take place, which shall include a centralised allocation process by an EU authority to replace the national allocation plans, a decision to auction a greater share of credits (above 60%) rather than allocating them free of charge, and including other greenhouse gases. The proposed goal for the Third Trading Period foresees an overall reduction of greenhouse gases of 20% by 2020 compared to 1990 levels.

12.2 Are there any national greenhouse gas emissions reduction targets?

Under the Kyoto Protocol, the EU15 are committed to reduce their carbon emissions by 2012 by 8% compared to the base year, while the EU27 are committed to a 20% reduction by 2020 compared to 1990 levels. In order to adhere to its obligations, Greece has implemented a programme since 2000 which coordinates all private and public sector activities with the aim of limiting greenhouse gases. This aggressive programme has taken measures affecting the household

and tertiary sectors, transportation, industry, electricity generation, waste disposal, agriculture, manufacturing processes and more.

12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

A very successful programme which has been in place for the past three years and which promotes energy efficiency in small scale settings is the “rooftop PV” programme. Under the terms of this government-sponsored initiative, domestic consumers of electricity and small businesses are given the opportunity to install small photo-voltaic systems (up to 10kWp) on the rooftops of their buildings. The electricity produced is sold to the HDNO and the financial gains from this sale usually offset all investment costs and

allows for a profit for the small investor. The success of this programme is evidenced by the fact that over 46MW have already been installed, with another 105MW in pending applications.

Furthermore the Energy Performance Regulation for Buildings refers to the energy performance of new buildings, as well as existing buildings under specific conditions. The regulation defines the methodology for the calculation of the energy consumption of buildings, sets the minimum energy performance requirements and provides for the issuance of an energy performance certificate, the inspection of boilers and air-conditioning systems and the incorporation of a national body of energy inspectors, in compliance with the European legislation.

Note

The answers provided herein are up-to-date as of 25 October, 2012.



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