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The International Comparative Legal Guide to:

Project Finance 2014

3rd Edition

A practical cross-border insight into project finance

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Group Publisher
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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
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Greece

Despina J. Doxaki

Kyriakides Georgopoulos Law Firm

Ioanna I. Antonopoulou

1 Overview

1.1 What are the main trends/significant developments in the project finance market in Greece?

The Greek project market focuses on infrastructure projects mainly in the areas of environment and energy, transport, ports, telecommunications, urban development, water, sewage, solid waste, health and education, public sector accommodation and leisure.

Significant infrastructure projects are currently implemented in Greece via PPPs, by virtue of Law 3389/2005 as amended and currently in force, instead of public procurement. The Greek Bond Law (Law 3156/2003), which introduces the possibility for a group of bondholders to be represented by a bondholder agent who takes securities in their name and on their behalf, also plays an important role in the Greek project finance market, as do other legal instruments such as the Fast Track Law for the acceleration of licensing procedure for strategic investments (Law 3894/2010 as amended and applicable).

Furthermore, the project market in Greece needs to be approached in the light of the privatisation process undertaken by the relatively recently established Hellenic Republic Asset Development Fund (HRADF); this was established in July 2011, is governed by Law 3986/2011 as amended and has taken the form of a public limited company, operating in accordance with the rules of the private economy and acting for the benefit of public interest.

1.2 What are the most significant project financings that have taken place in Greece in recent years?

Some of the most significant project financings focus on the energy sector, and more particularly in the field of renewables. Furthermore, various projects have either been realised or are in progress via PPPs, such as the utilisation of municipal estates, the restoration of buildings, the implementation of sport and other centres used during the 2004 Olympics, school buildings, the building infrastructure of universities and students' residences, police divisions and departments, fire stations, the construction of international conference centres, waste management systems, the installation and operation of security systems, hospitals, etc.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Under Greek law, an asset/claim security may be granted only over a specific asset/claim, which needs to be well defined, thus, no security can be granted by means of a general security agreement.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

Security can be taken over real property, plant, machinery and equipment. The Greek Civil Code (GCC) makes a distinction between movable (tangible and/or intangible) and immovable property. Immovable property is the soil and its constituents, whereas movable property is all property that does not qualify as immovable (art.948GCC). Constituents, according to the GCC, are, amongst others, things firmly attached to the ground.

Mortgage and pre-notation of mortgage (art.1257*ff.*GCC) is used as security over immovable assets. Mortgage may be granted only over real estate property as well as over usufruct rights, and may be established by virtue of a notarial deed or final court decision or law. Upon registration of the mortgage with the Mortgage Registry where the real estate is located, the security and the order of priority is established. Any assignment, pledge or change in the terms of the mortgaged claim are also noted in the mortgage book.

A pre-notation of mortgage is established only by virtue of a court decision and is registered with the Mortgage Registry or cadastre where the real estate is located. The difference between a mortgage and a pre-notation is that the former allows immediate satisfaction of the claim, whereas a pre-notation requires conversion to mortgage upon a court ruling, which may not be subject to an appeal, adjudicating the underlying claim.

Movable assets may be secured via: (1) a pledge under the GCC provisions; (2) a notional pledge and floating charge under law 2844/2000; and (3) a pledge established in favour of banking institutions under Legislative Decree 17.07/13.08.1923. More particularly:

- A pledge may be established on movable assets as well as on transferable rights and claims. The pledge is established by a notarial deed or document having a certain date, provided the pledged asset is delivered to the pledgee or a third party, if the latter has been agreed. In case of a pledge on claims, the security is perfected by notification of the pledge to the third-party obligor (art.1248GCC). The perfection entitles the pledgee to receive any benefits of the asset (e.g. dividends of shares, unless otherwise agreed), as well as its priority right in auction proceedings.

- Regarding the notional pledge and floating charge, such pledges are executed in writing and need to be registered with the Pledge Registry to achieve perfection and determination of ranking. Upon registration and unless renewed, the security is effective for 10 years from registration.
- A pledge granted in favour of banking institutions under Legislative Decree 17.07/13.08.1923 on the borrower's claims against a third-party obligor is established by a written agreement (no notarial deed is required). Upon perfection of the security, the pledge agreement is binding upon both the borrower and the third party. This agreement is perfected by the service of the agreement to such third party by a court bailiff.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

The security may be perfected following notification to the debtors, which is served by court bailiff. The chargor, following relevant agreement with the creditor and the inclusion of a specific clause in the security agreement, may, in the absence of a default, collect and make use of the pledged receivables.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

A pledge over bank accounts and an assignment of claims that the account-holder has against the account bank under the account relationship is established in favour of the creditor:

- Under Legislative Decree 17.07/13.08.1923, usually the account bank is also the bank which benefits from the pledge, but this does not preclude the establishment of a pledge in favour of a party other than the bank where the account is held. The pledge agreement must be served by a court bailiff upon the account bank.
- Under the provisions of Greek Law 3301/2004, financial collateral arrangements may also be established on cash, including bank account deposits.

Regarding the perfection of such agreements, kindly refer to question 2.2 with respect to movable assets.

2.5 Can security be taken over shares in companies incorporated in Greece? Are the shares in certificated form? Briefly, what is the procedure?

The provisions of the GCC applicable to the creation of a pledge on movable assets apply to the creation of a pledge on bearer shares of *sociétés anonymes mutatis mutandis*, i.e. the pledge should be established by a notarial deed or a private agreement with a certain date and the shares have to be delivered to the pledgee. The same applies to the pledge of registered shares of *sociétés anonymes*. A note of the pledge agreement should be endorsed in the body of the pledged shares and signed by both contracting parties, as well as to the shares' and shareholders' registry of the company issuing the pledged shares. Such obligations do not constitute security perfection requirements, but are necessary for legalising the pledgee towards the company issuing the shares.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

An average overall estimate per type of security would be the following:

Mortgage: Notary fees for execution of the mortgage deed ranging from 0.2% up to 1% depending on the secured amount plus VAT (currently amounting to 23%) and Lawyers' Pension Fund fees amounting to 1.3% on the secured amount. There is a state fee for registration of the mortgage amounting to 0.775% of the value of the secured claim. Stamp duties (when applicable) currently amount to 3.6%. In case of common bond loans secured *in rem*, a fixed amount of EUR100 applies, and if in the prefecture where the mortgage must be registered there is an operating cadastre, a flat application fee of EUR35 applies, with EUR20 payable for registration of auxiliary spaces.

Pre-notation of mortgage: The registration of a pre-notation costs significantly less, since it can be registered only by virtue of a court decision. There are registration fees of approximately 0.775% on the secured amount, a flat fee of EUR100 in case of bond loans and a flat fee of EUR35 or EUR20 for filing in the operating cadastre as per the above. Costs for the conversion of a pre-notation to a mortgage amount to EUR9 plus EUR4.5 per issued summary sheet, while the costs for re-registration of a pre-notation in case of change of the beneficiary are EUR100 per registration.

Notional pledge and floating charge: this comes to 0.775% on the secured amount, with fixed fees of EUR100 as per the above in case of a bond loan.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

The filing, notification and registration of security does not require a significant amount of time, however there could be delays due to bureaucratic matters. Regarding expenses for registration of the different types of securities, kindly refer to question 2.6 above.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

In principle, and as a general rule, there are no regulatory or similar consents required with respect to the creation of security over real property, plant machinery and equipment. There could however be exceptions to such rule in cases of concessions or PPPs, where the consent of the competent authority might be required.

3 Security Trustee

3.1 Regardless of whether Greece recognises the concept of a "trust", will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

The concept of trust is not, in principle, recognised under Greek law. Also, Greek law does not recognise the right of one entity to receive security on behalf of another, meaning that, in principle, the creditor enjoying such security shall itself execute, on its own name and behalf, the relevant security agreement.

The only deviation from such principle under Greek law, is the capacity of the bondholders' agent under the Greek Bond Law (3156/2003) to represent the bondholders and take and hold securities in their name and on their behalf. The bondholders' agent is entitled to proceed with any step necessary for the enforcement of securities and allocation of the relevant proceeds amongst the bondholders.

3.2 If a security trust is not recognised in Greece, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

The parallel debt structure is sometimes used to establish the borrower's obligation to pay to the security trustee any monies due to any of the secured parties, as if the security trustee was the sole lender or has a joint and several claim along with the rest of the creditors for the full amount of the secured liabilities *vis-à-vis* the borrower. If such structure were to be brought before the courts, validity of the parallel debt would primarily be assessed based on the arrangements between the creditors as to the underlying cause for the security trustee's "joint creditor" capacity.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

The enforcement of security may be implemented through the judicial enforcement procedure pursuant to the Greek Code of Civil Procedure (GCCP), through private foreclosure according to Legislative Decree 17.07/13.08.1923 and Law 3301/2004, or through bankruptcy and debt-restructuring proceedings. For the latter, kindly refer to question 5.1.

Requirements and constraints in foreclosure of security in accordance with GCCP:

- Enforceable title vested with a writ of execution issued by the courts within two months of the creditor's application, or by a notary public (the latter is not frequently used due to elevated fees).
- Service upon the debtor by a court bailiff of a copy of the enforceable title together with a notice for payment. Foreclosure of the debtor's assets begins three business days after the service upon the debtor as above. The debtor's objections to the enforcement proceedings and possibility of suspension of the enforcement are taken into account. Further, GCCP provides numerous other legal recourses against acts of enforcement by virtue of an enforceable title, which often may extend the duration of the procedure for two or three years.
- The assets are liquidated through public sale or other methods prescribed by law. Before or after that sale, other creditors may announce their claims against the debtor. The liquidation proceeds are distributed by the enforcement agent between the executing creditor and the announced ones as per the ranking of claims (art.GCCP 975*ff*). Such ranking may be contested by any party who took part in the proceedings, provided that it has legitimate interest.
- If the enforceable title is a court judgment or a payment order, initial court fees are approximately 1% over the amount of the claim. State fees for the issuance of a writ of execution vary from 0% to 3% over the claimed amount and/or the accrued interest. For real estate, registration fees are approximately 1% over the amount of the claim.
- Fees payable to the enforcement agent and the court bailiff depend on the nature of the enforcement act and the number of auctions. Additional costs are also likely to arise, such as payments for legal counsels, property appraiser, etc., which cannot be quantified upfront.

Requirements and constraints in private foreclosure according to Legislative Decree 17.07/13.08.1923 or Law 3301/2004:

- In case of Legislative Decree 17.07/13.08.1923, a notice for payment must be served to the debtor by court bailiff. If the debtor fails to pay the amounts due, the debtor may fix an auction for the sale of the pledged/mortgaged asset eight days after the service of the said notice. The debtor may challenge in court the notice of payment and the auction and could suspend the auction proceedings.
- In case of Law 3301/2004, in the event of default: (1) either the collateral-taker is entitled to realise or appropriate the financial collateral, without any court approval; or (2) a close-out netting provision comes into effect.
- The general ranking of claims in the above-mentioned judicial enforcement is applicable (subject to certain special rules relevant to special pledges, e.g. addressing issues on the competition of claims secured by pledge on a pool of assets and pledge on individual assets, which are elements of the pool, etc.) and the official costs are generally not substantial.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

Except for anti-money laundering provisions stipulating certain "know your customer duties", generally there are no restrictions, subject to possible exceptions regarding assets that are subject to special legislation.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

After the filing of the application of a debtor's bankruptcy declaration, the court may order the stay of creditors' individual actions in order to protect the debtor's estate from any change or reduction of its value. The stay is normally valid until the decision on the application is published. Upon the issuance of the decision, the individual actions of creditors against the bankrupt company and its assets are suspended.

In bankruptcy proceedings, creditors whose claims are secured by a special lien or *in rem* security over assets of the bankruptcy estate, are satisfied exclusively from the liquidation of the same. Secured creditors are satisfied from the total bankruptcy estate only if they waive their privilege or their security or when their security does not suffice for their full satisfaction.

Security over the project normally linked to business activities, production units or exploitation by the debtor cannot be executed until a relevant resolution is arrived at via a meeting of the creditors. The stay of execution cannot be extended to more than 10 months from the bankruptcy declaration, after which the stay is lifted.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

In order to prevent the reduction of the debtor's property, the Greek Bankruptcy Code (GBC) provides for the possibility of subsequent recall of any detrimental transactions carried out within the stage running from the cessation of payments up to the declaration in bankruptcy, for a maximum period of two years prior to the issuance of the decision declaring bankruptcy ("hardening period" or "suspect period"). Among the acts that are mandatorily revoked, is the establishment of *in rem* security, including the pre-notation of a mortgage or the granting of other securities of a contractual nature for pre-existing unsecured obligations, for which the debtor has not assumed a corresponding obligation or for securing new obligations that were assumed by the debtor with a view to replacing previously existing obligations.

Other acts concluded during the suspect period are subject to optional revocation provided that they are detrimental for the group of creditors. Such actions include every bilateral act of the debtor, or payment of its mature debts, which was concluded after the cessation of payments and before the declaration of bankruptcy. A prerequisite in such cases is knowledge by the counter-party that the debtor had ceased its payments.

Also, the debtor's acts concluded within the last five years prior to the issuance of the bankruptcy decision with intent to harm the creditors or to benefit others, are revoked if the third party with whom the debtor contracted had knowledge of the debtor's malicious intention at the time of performing the act.

In bankruptcy liquidation, the secured creditors (holding a special privilege) are ranked in parallel with creditors equipped with a general privilege (claims held by the Greek State, social security organisations or arising from labour contracts). In the event claims with general privilege coincide with secured claims, the first category is satisfied up to 1/3 of the liquidation proceeds, whereas an amount of up to the remaining 2/3 of the liquidation proceeds is allocated to the second category.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Merchants and undertakings with legal personality, which pursue an economic purpose, are eligible for bankruptcy. Legal persons governed by public law, municipal authorities and public organisations are not declared bankrupt. Special insolvency provisions exist for various legal entities, e.g. insurance companies, credit institutions, municipal companies, joint ventures, investment firms, the Hellenic Exchange S.A., etc. The GCB provisions apply also to joint ventures as *de facto* partnerships, and thus they have bankruptcy capacity.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

Following the issuance of a final or enforceable decision, the enforcement against the secured assets is conducted through court proceedings. Enforcement of security granted on movables and securities leads to public auction. However, voluntary auction may be made through a specific provision of law or court decision or agreement of the parties.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

Except the ordinary bankruptcy proceedings, the following insolvency options are available to debtors/creditors:

Rehabilitation procedure

Ordinary rehabilitation

This may be initiated by debtors who are facing financial difficulties or who have already reached the state of the cessation of payments following submission of the relevant application before the bankruptcy court requesting the opening of the rehabilitation procedure. If requested by the creditor, the individual enforcement acts against the debtor's assets may be suspended. The rehabilitation agreement shall be concluded within two months (with a possibility of extension for one month under certain circumstances) starting from the date of the issuance of the court decision. The conclusion of the agreement is effected either after the decision of a creditors' meeting by a quorum of creditors representing at least 50% of the totality of claims and a majority of 60% of claims of creditors represented at the meeting (including at least 40% of creditors secured by *in rem* securities or holding a special lien or a pre-notation of mortgage), or by means of negotiations with creditors representing the above majority percentages (60%-40%) of the totality of the claims. In the event that the court proceeds to the ratification of the agreement, then the latter shall have a binding effect even on dissenting creditors.

Pre-pack agreements

The non-judicial rehabilitation procedure (pre-pack procedure) aims at the direct ratification of the rehabilitation agreement, skipping the stage of the submission of an application for entry into the procedure.

Reorganisation plan

The debtor and its creditors may arrange on a contractual basis the course of the bankruptcy procedure, i.e. either the continuation of the debtor's operation under the existing or a new corporate structure, the sale or lease of the debtor in whole or in part to a third party as a "going concern" or the liquidation and allocation of its assets to the creditors. A reorganisation plan is adopted, and upon ratification by a court decision, the bankruptcy proceedings are terminated and the debtor assumes the operation of the business aiming at the fulfilment of the terms of the plan, whereas the creditors assume their claims against the debtor within the terms of the plan. The law provides a threshold for the decrease of the creditors' claims (no less than 10%, payable in whole or in part within three years). The rights of *in rem* secured creditors are not affected unless otherwise specified in the plan. In any event, these rights are maintained in favour of the new claim as this is formulated by the plan, unless the creditor secured by these agreed otherwise.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in Greece.

Directors can be liable, together with the company, for any tortious act or omission that took place during their management or representation of the company (art.71GCC).

Civil liability in the GBC is based on the culpable delay in filing for bankruptcy. The Board of Directors is obliged to file for bankruptcy within 30 days from the moment when the company reached the state of the "cessation of payments". Such liability normally covers the damages of creditors which were created from the date when the application for bankruptcy should have been filed, as above, up to the declaration in bankruptcy.

Liability for an unlawful act can also be established according to art.914GCC, provided that other provisions of law, such as insolvency law provisions, have been violated.

GBC also extends penal liability for various acts to administrators, members of the Board of Directors and to the directors of legal entities, who committed the crimes specified therein. An extensive enumeration of crimes punished with up to two years' imprisonment as well as pecuniary fines, is provided in the relevant provisions of the GBC (e.g. liability for hiding assets, entering into speculative or high-risk contracts, omitting to keep the regular books, hiding the commercial books, illegally omitting the drawing up of balance sheets, diminishing the assets of the company, or favourably treating a creditor to the detriment of other creditors).

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

As a member of the EU, OECD and other multilateral organisations, Greece generally treats foreign investment and ownership as equal to those held domestically.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

Greece has concluded about 40 Bilateral Investment Treaties (BITs) with other countries for the protection of foreign investments in its territory. On an EU and EEA level, the provisions of the TEU and TFEU, as well as the secondary EU legislation, are applicable for the protection of investments and foreign undertakings.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Protection of property enjoys constitutional protection and therefore Greece has not adopted any special laws for the nationalisation or expropriation of project companies and assets. Foreign investments are protected via the various BITs concluded by Greece aiming at the prohibition of nationalisation or expropriation or other measures of equivalent effect. These prohibitions may only be lifted for reasons of public interest; in this case, however, the principles of prior hearing, proportionality, equal treatment, transparency, etc. have to be respected, and the damages paid to the undertaking that is nationalised/expropriated have to be direct, adequate and effective.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

Typically, for a number of business sectors and activities there will be competence at Ministerial level (e.g. Transport and Infrastructure, Energy, Shipping, etc.), Regulatory Authority level (e.g. for Energy, for Telecommunications, for Railways, etc.), as well as general competence of the Ministry of Finance if state funding is involved (e.g. subsidies, state guarantees, special tax exemptions, etc.). The Special Secretariat of PPPs (within the Ministry of Finance) acts as the general supervisor throughout all phases of the execution of a PPP project; the Hellenic Real Estate Asset Development Fund is a state-owned private entity managing the commercial exploitation of state assets (privatisation projects). The Agency "Invest in Greece" aims at the creation of a one-stop shop service for their handling. Finally, the Court of Auditors has to approve state-funded projects.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Documents creating *in rem* security (equipment liens and mortgages) must be registered with the competent (Land) Registry in order to become valid and enforceable. Collaterals constituted in favour of banking institutions become valid only after service to the debtor by a court bailiff. Otherwise, private agreements require no registration formalities.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Acquisition of property rights in Greece is generally free and non-discriminatory, except in relation to acquisition of rights over land in "Border Regions" providing for special permits for non-EU/EFTA nationals. Ownership and concession of natural resources and pipelines is regulated by special legislation as per constitutional provisions; only long-term concession is allowed to non-state entities.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

Concessions are against royalty. Other issues should be addressed on a case-by-case basis.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

In principle, no.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Greece has a wide network of double taxation treaties. There are no particular restrictions other than a 25% withholding tax on dividends paid out to non-Greek parent companies of Greek subsidiaries (unless the EU Parent-Subsidiary Directive applies).

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

Yes, they can.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in Greece or abroad?

There are no restrictions on the payment of dividends to non-Greek resident parents other than the general company and accounting rules on dividend distributions.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

Greece has transposed most EU environmental laws into domestic legislation. A factor to be considered, depending on the nature of the project and its environmental impact, is annulment proceedings brought before the High Administrative Court (Council of State), which may stall construction works.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

There is no specific legal framework for procurement by private project companies. State or state-owned companies comply with public procurement rules transposing EU legislation.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

Insurance companies with a registered seat in an EU Member State may exercise their activities in Greece on a freedom of services basis. A notification to the supervisory body of the Member State of origin is required in such a case.

Insurance companies with a registered seat in a non-EU Member State may exercise their activities in Greece through a branch or agency located in Greece. A licence from the Bank of Greece – Department of Supervision of Private Insurance is required in this case.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

According to the GCC, if the mortgaged property is a building (or any immovable property, for the proper administration of which insurance is required) a creditor shall have the right to insure the mortgaged property against fire or other risk at the cost of the debtor. If the latter fails to pay the relevant premiums the creditor shall have the right to claim the immediate payment of the debt.

In this respect, the secured creditor, either domestic or foreign, may conclude an insurance policy and subsequently receive insurance compensation.

In practice, however, the claim from the insurance policy is assigned from the debtor-owner of the mortgaged property, movable or immovable, to the secured creditor (domestic or foreign).

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

EU citizens may freely reside in Greece. The only requirement for a lawful residence is the possession of a valid EU citizen passport. EEA/EU nationals wishing to stay and work in Greece for more than three months are provided with an EU national registration certificate from the police authorities for an indefinite period of time.

For third-country nationals a visa is required for their entry into Greece, after which (and within the time period for which the visa is valid) they need to apply for a permit depending on the category they fall under.

Law 3386/ 2005 distinguishes non-EU citizens allowed to receive a residence and work permit on the basis of offering services as: technical personnel; executives (expats) assigned to a Greek subsidiary; personnel coming to Greece under a services agreement between their home company and a Greek company, etc. A third-country citizen receives only one permit, which is valid as both a residence and a work permit.

Four common categories of residence permits are presented below:

- Article 15 of Law 3386/2005 provides for a residence permit lasting for one year which can be renewed every two years. Employees wishing to work in Greece for longer periods are provided with such a residence permit;
- Article 17 of Law 3386/2005 provides for a residence permit lasting for one year which can be renewed every two years. Executive staff, who wish to work at a Greek branch or subsidiary, are provided with such a residence permit;
- Article 18 of Law 3386/2005 provides for a residence permit lasting for one year which can be then renewed for another six months. Third-country nationals who move to Greece from a company established in an EU/EEA Member State in order to provide specific services within the framework of the relevant agreement between the above company and the counterpart who exercises his or her activities in Greece, are provided with this residence permit; and
- Article 19 of Law 3386/2005 provides for a residence permit lasting for six months which can be renewed for another six months. Third-country nationals who are specialised technical personnel and who move from a company established in a third country in order to provide services in Greece within the framework of a services agreement (i.e. installation, testing and maintenance of supplied products) are provided with this kind of residence permit.

Furthermore, Greece has implemented the "Blue Card" European directive regarding the conditions of entering and residence of third-country citizens who will be employed as highly qualified employees.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

There are no restrictions or controls on the import of project equipment other than the ones applying at EU level (Common Customs Tariff) and, potentially, military material.

10.2 If so, what import duties are payable and are exceptions available?

The average EU customs tariff is around 4%, and around 60% of goods are subject to the EU duty. VAT also generally applies to imports from non-EU countries. Further, special Excise Duties are imposed on certain goods (alcohol-petroleum products) in accordance with the Greek Customs Code (Law 2960/2001) and other national legal instruments, and are payable when those goods are put on the Greek market.

11 *Force Majeure*

11.1 Are *force majeure* exclusions available and enforceable?

According to jurisprudence, an event of *force majeure* is an event which is beyond the control and without the fault or negligence of the party affected, and which, by the exercise of reasonable diligence, the party affected was unable to prevent. It depends on the circumstances as to whether an event may or may not be considered by a court as *force majeure* so that a party can rely upon this as a defence for failing to fulfil its obligations under a contract. Clauses explicitly defining which events are considered as *force majeure* can be agreed upon by contractual parties. Such definition renders the administration of a contract and, more particularly, the mechanism for dealing with *force majeure* events, simpler and more effective. *Force majeure* clauses exist in all project finance transactions and are included in the project documents implementing the project.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

A set of legislation exists, aiming to cover all aspects of corruption in political and economic activities as well as bribery of both foreign and domestic public officials:

(i) Law 2656/1998, ratifying the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

(ii) Law 2802/2000, ratifying the Convention against corruption involving officials of the EC or officials of Member States of the EU;

(iii) Law 2803/2000, ratifying the Convention on the protection of the EC financial interests;

(iv) Law 3560/2007, ratifying the Criminal Law Convention on Corruption and Additional Protocol;

(v) Law 3666/2008, ratifying the UN Convention on Combating Corruption;

(vi) Greek Criminal Code (GCrC), Articles 234-237, 239 (as amended by Law 4055/2012 and Law 4198/2013), determining passive and active bribery involving public officials, where the perpetrator of active bribery (art.236GCrC) may be any individual or legal entity;

(vii) Law 4022/2011, referring to trial corruption acts of public officials; and

(viii) Law 1608/1950 (for the protection of the State's funds), which does not provide for different acts but serves as an aggravating factor (from a sentencing point of view) when the State's financial damage exceeds the limit of EUR150,000.

Corruption cases are also investigated by the Financial and Economic Crime Unit, a special task force of the Ministry for Finance with police and investigating powers. The Unit is supervised by a Public Prosecutor, and is entitled to conduct full police investigations throughout the country and request mutual assistance at all stages of investigation. A newly established Authority, the Economic Crime Prosecutor, aims at investigating and prosecuting in cases (including corruption) involving financial damage of the Greek State (Law 3943/2011).

Criminal liability refers primarily to the individual. Although corporate liability is still not generally applicable, several provisions stipulate certain forms of sanctions on the undertaking that benefits from the corruption act. Law 2656/1998 provides for penalties imposed on legal entities in the form of administrative fines. Law 3560/2007 acknowledges that legal entities are liable for bribery if the acts of bribery were committed in their favour by individuals empowered to act on their behalf or to make decisions in relation to the company's activities, and provides for a series of administrative penalties. Administrative fines are the main type of sanctions.

Regarding bribery involving public officials, under GCrC the basic penalty in cases of a misdemeanour act is at least one year's imprisonment (misdemeanour acts are punishable with imprisonment of up to five years) and a monetary fine of up to EUR150,000. When the value of benefits, gifts, etc. exceeds the amount of EUR120,000 in total, bribery becomes a felony and is punishable with up to 10 years' incarceration and a monetary fine of between EUR50,000 and EUR500,000.

Private commercial bribery is punishable according to Article 5 of Law 3650/2007 which is applicable to commercial/business activities without any involvement of public officials. Depending on the type of transaction that may constitute a bribery, other legal provisions may apply, especially those on money laundering (Law 2331/1995) and criminal tax offences (Law 2523/1997). In such cases, more than one procedure can be initiated against an individual or a legal entity. There is also room for separate sanctions against a legal entity in the form of a fine, temporary cease of activity, etc. The basic penalty in cases of a misdemeanour act is at least one year's imprisonment. When the value of benefits, etc. exceeds the amount of EUR73,000 in total, bribery becomes a felony and is punishable with up to 10 years' incarceration.

When bribery acts result in financial losses to the Greek State exceeding EUR150,000, Law 1608/1950 is applicable, whereby sentences of up to 20 years' incarceration (with a minimum sentence of 10 years) are provided for. If aggravated circumstances apply, a maximum of a life sentence may be imposed.

Greece has ratified the Civil Law Convention on Corruption by Law 2957/2001. Provisions therein are part of Greek Civil Law, and mainly acknowledge rights of compensation, of annulment of agreements that were the result of bribery act(s), and there are also specific provisions for the protection of civil servants against disciplinary punishment for reporting corruption practices to higher officials.

13 Applicable Law

13.1 What law typically governs project agreements?

Greek projects are typically governed by the laws of Greece given that the projects are located within the Greek jurisdiction and several construction operation and environmental provisions of a mandatory nature apply.

13.2 What law typically governs financing agreements?

Financing agreements are subject to the law on which the parties agree, taking into account creditors' requirements. In practice, the applicable law is either Greek or English law; security agreements are typically governed by Greek law.

13.3 What matters are typically governed by domestic law?

There is no limitation, kindly see *supra* questions 13.1 and 13.2.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

Generally, submission to a foreign jurisdiction may be validly agreed between the parties under Greek Law. However, a foreign jurisdiction clause could be denied by a Greek Court, especially if same refers to the jurisdiction of a non-EU Member State country in case there is no close connection of such country with the case and a hearing in such country appears impossible or unreasonable. Furthermore, submission to a foreign jurisdiction may be limited mainly: (a) by the rules on exclusive jurisdiction set out in Article 22 of Council Regulation 44/2001; and (b) for disputes arising out of consumer contracts or employment contracts.

With regard to enforceability, a distinction needs to be made between decisions issued by EU and non-EU Member States' courts. Decisions of EU courts are declared enforceable in Greece through a simple procedure by virtue of Council Regulation 44/2001. As from 10/01/2015, according to Council Regulation 1215/2012, if a decision issued in a Member State is enforceable in that Member State, then it shall also be enforceable in Greece without any declaration of enforceability being required. The conditions for the enforceability of decisions issued by non-EU Member States' courts depend on bilateral treaties. In the absence of any bilateral treaty, for an enforceable decision of a non-EU Member State court to be recognised and declared enforceable in Greece, the court will also examine whether such decision meets certain procedural and factual standards in accordance with Articles 323 and 905GCCP.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Yes. Generally, the Greek courts review whether they have jurisdiction over a dispute subject to arbitration and may decline their competence in favour of an arbitration court, given that the parties to the dispute have validly agreed to an arbitration clause, that they have the right to freely make use of the subject matter of the dispute, and that such dispute does not refer to labour law issues.

15.2 Is Greece a contracting state to the New York Convention or other prominent dispute resolution conventions?

Yes, Greece is a contracting State to the New York Convention. Further, Greece is a contracting member of the International Centre for the Settlement of Investment Disputes (ICSID).

15.3 Are any types of disputes not arbitrable under local law?

Pursuant to GCCP, labour law disputes cannot be subject to arbitration.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

Domestic arbitration is not mandatory in Greece.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

Yes, on some occasions and depending on any state guarantees which may have been granted for the project. Direct agreements are the typical method used for the provision of such guarantees.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Pursuant to the provisions of the new Greek Income Tax Code (in force as of 01/01/2014), any legal entity which has its tax residence or maintains a permanent establishment in Greece is obliged to withhold tax at a rate of 15% on interest payments to domestic or foreign lenders, without prejudice to the provisions of the applicable double tax treaty. No withholding is effected on interest payments paid to affiliated legal entities, which meet the preconditions set in the Directive 2003/49/EU. In particular, the interest payments deriving from bank loans, late interests included, are exempted from withholding tax. With respect to interest from bond loans, the laws granting exemption for foreign investors have been abolished, therefore such income is subject to withholding tax. The term "interest", as it is determined in Greek law, consists of any income accruing from any kind of claims, whether they are secured through a mortgage or not. In that respect it may be argued that the proceeds of a claim under a guarantee or the proceeds of enforcing security, to the extent that they constitute interest income, are subject to tax as above. It should be noted that further guidelines are expected in the near future for the interpretation of the provisions of the new Greek Income Tax Code.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

A "fast track" procedure is applicable for strategic investments in Greece which have a considerable impact on the condition of the Greek economy. Specifically, tax incentives are determined with a special law ratifying submission on the fast track procedure. Such incentives, indicatively, may include the stabilisation of the tax regime, the forming of non-taxable reserves, or the reduction of, or exemption from, duties, special taxes, levies or fees in favour of third parties, always in compliance with EU Regulation 800/2008 on State Aids. Moreover, in the context of the "ordinary" incentive legislation, subsidies may be available or alternatively the formation of tax-free reserves may be granted. Finally, R&D expenditure (augmented at 30%) is accepted for tax deduction from the enterprise's gross profits.

Loans and credits provided by domestic or foreign banks and credit institutions are subject to the contribution set out in Law 128/1975 (at a rate of 0.6%). Loans granted by Greek banks and any supplementary agreement (i.e. securities etc.) are exempt from stamp duty. The same exemptions apply to loans (including interest and supplementary agreements) granted by foreign banks, irrespective of the location of conclusion and payment of the respective agreements. Ordinary loans concluded and executed in Greece are subject to the respective stamp duty.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in Greece?

The matters outlined above address the most important considerations to be taken into account.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

No special legal impositions apply to project companies issuing bonds or similar capital market instruments. Shares and corporate bonds are the main capital market instruments in Greece. As with any other company, a project company may issue shares (capital financing) or corporate bonds (debt financing) for raising capital. Shares or bonds may be offered either through a private placement or through an offer to the public (usually through a listing on the Athens Exchange). If a public offer takes place, then the issuer should comply with the applicable legislation concerning mainly the publication and approval of a prospectus (Prospectus Directive and relevant Greek legislation). If such shares or bonds are to be listed on the Athens Exchange, then additional legal requirements and procedures need to be met and followed for listing and admission to trading. Issuers with shares or bonds listed on the Athens Exchange have increased reporting, publication and notification obligations.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in Greece.

This is not applicable.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

This is not applicable.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in Greece? If so, what steps could be taken to mitigate this risk?

This is not applicable.

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Despina J. Doxaki

Kyriakides Georgopoulos Law Firm
28 Dimitriou Soutsou Str.
115 21 Athens
Greece

Tel: +30 210 817 1500
Fax: +30 210 685 6657 8
Email: d.doxaki@kglawfirm.gr
URL: www.kglawfirm.gr

Despina specialises in banking and finance. She has worked with Standrook and Hooper, the EU, as in-house counsel to KPMG (tax planning), Technical Olympic S.A., C.I. Sarantopoulos S.A. and Alpha Bank S.A. Despina deals with project finance, corporate finance and banking transactions and has been involved in corporate restructuring projects as well as the development of investment schemes. She has working experience in Greece, the UK and Belgium.

Ioanna I. Antonopoulou

Kyriakides Georgopoulos Law Firm
28 Dimitriou Soutsou Str.
115 21 Athens
Greece

Tel: +30 210 817 1500
Fax: +30 210 685 6657 8
Email: i.antonopoulou@kglawfirm.gr
URL: www.kglawfirm.gr

Ioanna specialises in project finance (including PPP transactions) and refinancing projects. Prior to joining the firm, she worked for the Legal Division of Emporiki Bank of Greece S.A. and was involved in bank projects both in Greece and abroad, including the establishment of Emporiki Bank's subsidiaries in Eastern Europe. Ioanna was commended in February of 2006 by the then Chairman of the Board of Directors and Managing Director of Emboriki Bank for her legal services regarding the sale of subsidiaries in Armenia and Georgia.

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GLG
Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

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