



# ICLG

The International Comparative Legal Guide to:

## Real Estate 2016

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# Greece

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## 1 Real Estate Law

- 1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. 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 chapter III of the Civil Code (Articles 947 to 1345). In addition, real estate legislation is additionally included in various statutes, indicatively:

- *Back and Front Shore Delimitation*: Law 2971/2001, Law 4281/2014;
- *Border Zones*: Law 1892/1990, Law 3978/2011;
- *Expropriation Provisions*: A.N. 1731/1939, Legislative Decree 797/1971, Laws 2882/2001, 3986/2011 and 4146/2013;
- *Fast-track Investments*: Laws 3894/2010 and 4072/2012;
- *Forestry Provisions*: Legislative Decree 86/1969 (Forest Code), Laws 998/1979, 1734/1987, 3208/2003, 3889/2010, and 4280/2014;
- *Land Partition and Reallotment Provisions*: Legislative Decree 17.07.1923, Compulsory Law 431/1968, Laws 3147/2003, 651/1977, 720/1977, 1337/1983, 2442/1994, 2508/1997, 2637/1998, 3147/2003 and 3212/2003, Ministerial Decision 168/2010;
- *Land Registry/Cadastral Provisions*: Legislative Decree 19/23.07.1941, Laws 1647/1986, 2308/1995, 2664/1998, and 4164/2013;
- *Real Estate Leasing*: Law 1665/1986;
- *Residence Permits for Real Estate Owners*: Law 4146/2013, as amended by Law 4251/2014;
- *Public Real Estate Property Provisions*: Legislative Decree 16/1926, A.N. 1539/1938, A.N. 263/1968, A.N. 973/1979; Law 3986/2011; and
- *Settlement of Illegal Buildings Works*: Laws 4014/2011 and 4178/2013.

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

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 your jurisdiction? 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, sets out 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 (defined by law). 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 decision to lift the ban is made by the Minister of Defence following the submission of an application. 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 your jurisdiction? Are any of them purely contractual between the parties?**

Greek Law recognises the following rights *in rem* over land: (a) ownership (full and bare); (b) real and personal easements (e.g. right

of way, usufruct); (c) mortgage (encumbrance) 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 five to 99 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 agreement – “loan for use” agreement, 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, as amended).

## 4 System of Registration

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

All rights *in rem* over land are mandatorily registrable (see also question 4.3 below). On the other hand, contractual rights over land (e.g. “loan for use”) 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):

- (a) Pursuant to the system of Transcriptions and Mortgages Books, which currently applies in the majority of the Greek territory, rights over land (and not the land itself) are subject to registration in local Land Registries.
- (b) 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. in the case of extraordinary adverse possession which presupposes possession over the land, even in bad faith, for twenty years and in the case of ordinary adverse possession which presupposes possession over the concerned land in good faith for ten years). 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 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 compulsorily registrable? What (if any) is the consequence of non-registration?

As mentioned in question 4.1 above, all rights *in rem* over land are mandatorily 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 (other than commercial lease) over real estate for a duration exceeding nine 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.

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

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 and zoning 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 irrebuttable evidence of such rights. As far as the National Cadastre is concerned, initial (as of the date of its operation) registrations of rights produce rebuttable evidence of such rights after the lapse of 5-7 or 12-14 years, (depending on whether the beneficiary is the Greek state or not) from the date of the commencement of operation of the Cadastral Office. As far as posterior registrations are concerned, they produce full, however, rebuttable evidence of such rights after the lapse of a 10-year period after the first registration has taken place.

### 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 locally competent Land Registry or the Cadastral Office. 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 your jurisdiction? If more than one please specify their differing rules and requirements.

There are two systems of publicity of rights over an immovable: (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 a *person-based* index of the persons who have concluded real estate transactions regarding immovable (personal accounts), while under the Cadastre scheme an asset-based 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 in 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.

Special legislation on the operation of local Cadastral Offices exists in some regions of Greece (i.e. Dodecanese).

#### 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 (as the case may be).

#### 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 be accessed through on site visits to the Land Registry offices or to the Cadastral offices; data kept at some Land Registries/Cadastres may also be accessed electronically.

#### 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 scarce cases, 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 cause). 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 make available to the public the Transcriptions Books or the Cadastral Leafs. However, the due diligence of the title deeds prior to a transaction may only be undertaken (land titles reviewed and assessed) by lawyers. Furthermore, a buyer, depending on the circumstances, might also need to 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 your jurisdiction? Please briefly describe their roles and/or duties.

##### a) Real estate agents

There is no legal obligation to appoint an agent for the conclusion of a real estate transaction.

##### 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 may be represented by a lawyer before the Notary Public for the execution of any real estate deed.

##### d) Civil engineers

Topographic drawings signed by the contracting parties and the civil engineer 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 area 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 an agreement, minimum statutory fees apply.

## 6.3 Do you feel there is a noticeable increase in the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

An increase in the availability of capital, essentially in the form of foreign equity, has been discernible. Real estate transactions have been awash with equity. Positive expectations have been recorded in the sector of tourist properties and holiday residencies, while there have been certain indications of foreign investment inflows as a result of the participation of foreign funds in the share capital of Greek Real Estate Investment Companies (REICs). A steady stream of enquiries about property purchases and lettings in Greece has been confirmed by real estate market players, especially high-end holiday lets or villas on islands. Luxury accommodation sectors have reported an ever increasing numbers of tourists from across the Middle East, Europe and North America.

## 6.4 What is the appetite for investors and developers in your region to look beyond primary real estate markets and transact business in secondary or even tertiary markets? Please give examples of significant secondary or tertiary real estate transactions, if relevant.

The commercial primary real estate market and transaction business has recorded a dramatic drop in the past few years with the household’s investment demand being shifted towards secondary or even tertiary real estate market. Large institutional investors have recently become increasingly more comfortable in utilising the real estate secondary market as a portfolio management tool. Selling fund interests in Greece appears as a means of rebalancing portfolios (debt restructuring) in order to off-load private equity fund commitments or of exiting the poorer performing funds. For instance, the establishment by banks of innovative joint ventures to manage a substantial part of the banks’ non-performing assets aimed at further strengthening the banks’ capital adequacy.

In addition, in terms of investment interest, the most dynamic sector appears to be touristic properties which continue to garner attention

by both real estate investment funds and private equity, both of which seek deals that allow them to lease and renovate distressed accommodation assets at below replacement cost.

## 6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

Due to the imposition of capital controls, essentially capping the amount of funds people can access from banks, the percentage of cash transactions and the required down-payment in cash for real estate purchases has decreased. This trend is particularly pronounced in the residential sub-sectors of social living, housebuilding, private rented residential, student housing and retirement living.

## 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) signing of a relevant notarial deed by the contracting parties; (b) payment of the contractual price, otherwise the sale may be reversed; and (c) registration of such deed with the competent Land Registry/Cadastre. In addition, payment of the corresponding transfer tax is also a prerequisite for the transfer. After the entry into force of Law 4178/2013, all real estate property transaction deeds are mandatorily accompanied with a legally binding statement from the owner, and a certificate from the engineer declaring and certifying that no illegal structures exist. Breach of these conditions triggers absolute invalidity of the notarial deed and entails severe sentences against all parties involved in the transactions.

After the entry into force of Law 4223/2013, any *in rem* or contractual agreement, by virtue of which rights over real property are established, transferred, altered or a mortgage or prenotation of mortgage right is granted thereon, is null and void, if no Real Estate Unified Ownership Tax (ENFIA) certificate is attached to the notarial deed, ascertaining that the real property has been properly declared and the tax obligations for a period of five years prior to the transaction have been fulfilled.

Law 3661/2008 provides for the issuance of a so-called “energy performance certificate” upon completion of the building’s construction or renovation. Such certificate is required for the conclusion of any *in rem* (i.e. purchase deed) or contractual (lease) agreement (see also question 11.10 below).

### 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, the seller solemnly states in the notarial deed that he warrants and guarantees that the property is free from any encumbrance, debt, mortgage, prenotation of mortgage, confiscation, claim by any third party, other legal and real defects, lease, concession of use by any means, expropriation, contribution of land and any debts *vis-à-vis* 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.

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 of 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 in 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 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 prior to the most recent 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 make all possible endeavours in order to have the sale and purchase transfer deed registered with the competent Land Registry and/or Cadastral Office (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 (please 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 prenotation of mortgage. The mortgage or prenotation of mortgage must be registered with the local Land Registry or Cadastre 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 does not automatically acquire ownership rights over 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 at least 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 (acquisitive prescription). 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 or privileges over other creditors. Protection is created by establishing a mortgage over the real property provided it is registered in due time before any other encumbrance. According to the legal principle "*prior in tempore prior in jure*", the first-ranking mortgage defeats any subsequent mortgage 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 rate is 3%. 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 value between the agreed value and the "objective" value, as set 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; in

certain circumstances VAT is imposed on real estate transfers (please see 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?

The gains arising from real estate transfer by individuals not engaged in business is subject to a 15% capital gains tax, which burdens the seller of the real property. Such tax burden has been suspended until 31 December 2016.

## 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 out the business of the construction 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 construction 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?

No other taxes burden the seller.

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

There is no difference with respect to the transfer for consideration by an individual of participations, which attracts over 50% of their value directly or indirectly from real property, if such transfer does not constitute business operation, since from 1 January 2014 such transfer is subject to a 15% capital gains tax. The latter has been suspended until 31 December 2016.

If the above does not apply, the tax treatment of the transfer of ownership of a company owning real estate depends on the type of transferred titles (e.g. listed or not listed).

On the other hand, the aggregate of the revenues acquired by legal entities is deemed as income from business operations, subject to the corporate tax rate, currently set at 29% for legal entities maintaining double-entry accounting books. Thus, if the seller is a legal entity any profits from the sale shall be taxed at 29% provided that it maintains double-entry accounting books.

## 10 Leases of Business Premises

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

Leases of business premises are regulated by Presidential Decree

34/1995 – as amended by Laws 3853/2010 and 4242/2014 – 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, notarial offices, etc.).

### 10.3 What are the typical provisions for leases of business premises in your jurisdiction 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

Until enactment of Law 4242/2014 (28.02.2014) the compulsory duration of business leases was twelve years, even if the parties had contractually agreed a shorter term or an indefinite term. Under certain conditions, the tenant could extend the lease for an additional four years, as long as the lessor did not seek return of the property within nine months from the expiry of the lease. Under the new Law, agreements concluded after its enactment are of a three-year term, even if the parties have contractually agreed a shorter term or an indefinite term. The optional right of an additional four years is not secured by the new Bill; however, it may be contractually agreed upon between both parties.

#### (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 competent.

#### (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 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 insures his property and pays the premium.

#### (e) (i) Change of control of the tenant

The change of the shareholding structure of the tenant does not have any impact on the lease (either commercial or not) agreement, unless otherwise stipulated in the agreement.

#### (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; such 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 so that it is 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 is subject to rules, according to which not all expenses (including depreciation) are necessarily taken into account. Net taxable income of legal entities is treated as normal income from business operation and the related expenses are tax deductible if the general preconditions set in law are satisfied (i.e. if they are realised for the interest of the enterprise, if they correspond to an actual transaction, the value of which is not deemed lower or higher than the market value and if they are inscribed in the books of the enterprise and are evidenced by the proper documents).

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.

**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?**

Business leases are automatically terminated on expiry of the *ex jure* (12-year) or (3-year) duration, depending on whether the lease is concluded prior to or following the enactment of Law 4242/2014, unless otherwise stipulated in the agreement.

As far as new leases are concerned, they are terminated either at the expiry of their contractual term (which may vary from the 3-year term) or at the lapse of their legal term. Termination of business leases can be performed by:

- Subsequent agreement between the parties evidenced by a date-certain document.
- Unilateral termination by the tenant without cause by 3 months' prior written notice to the landlord.

As far as old leases are concerned, premature termination of business leases can be performed:

- By the lessee after the lapse of one year from the date of their conclusion.
- By the lessor upon payment of compensation to the lessee and subject to the following conditions and after the lapse of nine to eighteen months from the date of conclusion of the agreement:
  - use of the premises by the landlord himself for business purposes;
  - reconstruction of the leased property by the landlord or the owner of the property;
  - use of the leased premises as a family home of the landlord; or
  - demolition of a collapsed building.
- Exceptionally, leases expiring before 31 August 2014 could be terminated without cause by the lessor, provided that termination took place before 31 August 2014 and upon payment of compensation to the lessee equal to the amount of six months' rent.

- Old leases may also be terminated by virtue of a subsequent agreement between the parties evidenced by a date certain document.

At the expiry of their contractual term or the 12-year term, leases may be terminated without cause by either the lessor or the lessee, upon 15 days prior notification to the other contracting party.

**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, 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. 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 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:* (a) the Urban Development Law (1337/1983); (b) the Sustainable Urban Development Law (2508/1997); (c) the General Construction Regulation (Law 1577/1985); (d) the new General Building Construction Code (Law 4067/2012); (e) the Law for "Space Planning and Sustainable Development" (2742/1999); Law 4269/2014 "Spatial and urban planning"; Law 4277/2014, with provisions for the conservation of significant small wetland and mountainous ecosystems; and (f) the Law for "Back and Front Shore Delimitation" (2971/2001), Law 4281/2014. The above general framework is supplemented by Laws 2831/2000, 3212/2003, 2882/2001, 4070/2012, and others containing provisions for particular categories of land (e.g. coastal zones or mountainous areas) or for specific issues, such as Laws 3028/2002 on protection of antiquities and 998/1979 on protection of forests, as amended by Law 4280/2014, and finally by Law 4276/2014 on touristic accommodation/infrastructure development.

*Environmental legislation:* Laws 1650/1986, 3010/2002 and 4014/2011, (in accordance with EU Directives 96/61/EC and 97/11/EC).

Law 4042/2012 relating to the protection of the environment through criminal law and the transposition into national law of Directive 2008/99/EC provides for penalties/monetary fines against waste operators if they are likely to cause damage to the environment.

The majority of environmental legislation in Greece results directly from the incorporation of EU legislation in national law, with the exception of legislation for the protection of forest ecosystems. In particular: (a) Presidential Decree 165/2003 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, which provides for the issue of an energy certificate that is needed in case of transactions involving buildings exceeding 50 sq.m.; and Law 4042/2012.

### **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 against full and timely compensation to the owners or other *in rem* beneficiaries, if doing so serves the public interest and such legal route is provided by law. Pursuant to Law 2882/2001, as in force, the expropriation process is deemed to be perfected upon publication in the Government's Gazette of notification by the expropriating party that payment of the lawful consideration in favour of the parties, whose property is being expropriated, has been made in a special account with the Loans and Deposits Fund. Unless full payment is made, the beneficiary of the expropriation cannot take possession of the expropriated asset.

The State fixes the expropriation which is subject to judicial review 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.

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

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).

### **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 for building works are the Building Permit and the Small Scale Works Approval, both of which, depending on the scale of the works, cover construction, demolition, and renovation. No permits or licences are required for the use of real estate, unless restrictions are imposed from an urban planning, zoning or environmental perspective, (i.e. protected areas such as NATURA 2000, archaeological sites, or traditional settlements, or sector-specific restrictions based on the land's character, such as high productivity lands, forest land, etc.).

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

Permits and licences for building works are commonly obtained

in Greece and are necessary for the performance of any building works. 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 and the works to be performed.

A building permit may be issued only after a complete file has been submitted. Although the law provides for a specific timeline for the issuance of the building permit after the submission of the complete file, a real estimation for the granting of a building permit would be approximately up to four months.

### **11.7 Are there any regulations on the protection of historic monuments in your jurisdiction? 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 dated up to 1453 AD belong to the State and cannot be transferred. Monuments constructed after 1453 AD are listed and are subject to certain construction, use and exploitation restrictions in accordance with Law 1577/1985, which aims to prevent their 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 your jurisdiction?**

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 clean-up ever mandatory?**

Pursuant to the provisions of the environmental legislation, (article 29 of Law 1650/1986), any individual or legal entity that pollutes or damages the environment is liable for compensation, 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. Furthermore, according to the provisions of article 30 of the law, interim measures prohibiting the operation of a polluting facility may be applied until the introduction of suitable measures against the pollution and/or degradation of the environment.

### **11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.**

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

The law 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.

The law also provides for the issuance of a so-called "energy performance certificate" upon the timely 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 for 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.

Such certificate is required for the conclusion of any *in rem* (i.e. purchase deed) or contractual (lease) agreement. Public notaries are obliged to attach such Energy Performance Certificate to their deeds. After the issuance of the Ministerial Decision 1018/13.01.2012 Tax authorities, upon submission of lease agreements, are competent to control whether such prerequisite is fulfilled.

## 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 Office for Greek Greenhouse Gas Emissions Allowances (OGGGEA) operates under the National Centre for Sustainable Development and hosts the Greek Greenhouse Gas Registry (GGGR).

As from 2012, the registry architecture of the EU Emissions Trading System (EU ETS) replaced the EU Member States' national registries. EU ETS operations are centralised in a single EU registry developed, operated and maintained by the European Commission.

The GGGR is part of the Union Registry. The Union Registry is an online database that holds accounts for stationary installations as well as for aircraft operators. It ensures accurate accounting for all allowances issued under the EU ETS, precise tracking of holdings, issuances, transfers, cancellations and retirements of general allowances and Kyoto units.

The EU ETS works on the 'cap and trade' principle. A 'cap' is set on the total amount of certain greenhouse gases that can be emitted by the factories, power plants and other installations in the system. The cap is reduced over time so that total emissions drop.

Within the cap, companies receive or buy emission allowances which they can trade with one another as needed. They can also buy limited amounts of international credits from emission-saving projects around the world. The limit on the total number of allowances available ensures that they maintain their value.

After each year a company must surrender enough allowances to cover all its emissions, otherwise heavy fines are imposed. If a company reduces its emissions, it can keep the spare allowances to cover its future needs or else sell them to another company that is short of allowances. The flexibility that trading brings ensures that emissions are cut where it costs least to do so.

In accordance with the national legislation which implements the relevant European legislation, the Greek part of the Union Registry is managed by the OGGGEA which also serves as a contact point for national and international authorities. The OGGGEA is also responsible for the operational management of the registry and provides account holders with the required information and support.

### 12.2 Are there any national greenhouse gas emissions reduction targets?

Greece as a Member State is bound by the targets set by EU. In 2020, emissions from sectors covered by the EU ETS will be 21% lower than in 2005. By 2030, the Commission proposes they will be 43% lower.

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?

Apart from the regulatory requirements relating to the energy performance of buildings (please see question 11.10), a very successful programme which is in place and promotes energy efficiency in small-scale settings is the "rooftop PV" programme, running until 31 December 2019. Under the terms of this 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 – the financial gains from this sale usually offset all investment costs – and allows for a profit for the small investor.

#### Note

The answers provided herein are up-to-date as of 27 November 2015.



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Gus heads the Energy and Infrastructure department. His main area of expertise focuses on the energy industry. He has been involved in the liberalisation of the Greek electricity market and gas market. Due to the complexity of the issues associated with the electricity market regulations, he advises on major regulatory issues of the electricity and gas market, including the renewable sector. As a business lawyer focusing on the energy sector, key international energy companies investing in Greece have mandated Gus in the early stages of their investment programme for the implementation of important energy projects (infrastructure projects such as oil and gas investments, licensing and development of gas pipelines, establishing power generation plants, wind parks, low pressure gas distribution networks, etc.). Another element of his practice is the public sector privatisation projects for which he has acted for both the Greek State and the private sector (e.g. the privatisation of state-owned companies, concession agreements, public private partnerships relating to parking stations, toll roads, etc.). Project finance is a strong section of his practice, since major local financial and credit institutions and private equity funds instruct the team for the financing of energy infrastructure projects. Gus has also served as a managing partner of KG Law Firm, co-chair of the SEE LEGAL Group, and currently serves as Secretary General of IENE (Institute of Energy for South East Europe).



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Elia Iconomidou has been active in the Energy and Infrastructure department of KG Law Firm since 2008. Her main area of practice is Real Estate Development Law, mostly acting for international investors, State Privatization Funds, construction market players and banks. In addition, she practises in the areas of Administrative/Public Law, Energy and M&A.

She has been actively involved in real estate transactions (both urban and rural), energy and infrastructure (hotels, airports, schools) M&As, project finance projects, and PPPs, with a focus both on the due diligence side and the negotiation and drafting of the real estate related transaction documentation.

Elia advises on the privatisation schemes of public real estate land and leads the due diligence of both public and private real estate properties.

Her expertise includes forest, environmental and administrative legislation, special regimes of ownership (quarries, mineral, springs, organised beaches, backshore areas, tourism infrastructure), and particular regimes of acquisition of *in rem* rights (expropriation, fast-track process, etc.).



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