

Greece

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Collateral

1 What types of collateral are available?

- Hypothecs and hypothec prenotations on immoveable property (land, buildings and flats)
- Preferred ship mortgage and ship hypothec over ships
- Pledge on moveable tangible property (eg, industrial equipment) and negotiable instruments (eg, securities, shares, etc)
- Pledge on intangible property (ie, receivables, intellectual property rights, patents, trademarks, etc)
- Pledge on bank accounts
- Guarantee – pursuant to a contract of guarantee, the guarantor promises to pay a creditor in case the debtor defaults.

Perfection and priority

2 How is a security interest in each such type of collateral perfected and how is its priority established? Are any fees or taxes payable to perfect a security interest?

Greek law does not distinguish between attachment and perfection of security rights. A security interest is perfected (and at the same time attaches to property) by registration in a public registry. Before registration there exists no security interest at all.

Hypothec on immoveable property

Perfection takes place on registration at the land registry of the place where the property is situated. A hypothec is always registered for a specific amount of money. Priority of competing hypothecs is determined by reference to the date of registration. All hypothecs registered on the same date rank equally.

Hypothec prenotation on immoveable property

Perfection is effected on the same manner as a hypothec, with the specific reference that it is prenotated. A mortgage prenotation confers on the creditor the right to convert it into a hypothec upon the debtor's default.

Preferred ship mortgage and ship hypothec

Perfection is effected upon registration in the ship register.

Pledge on moveable tangible property

Perfection can be effected in two ways, either according to the provisions of the Civil Code by agreement and delivery of possession or according to Statute 2844/2000 by agreement and registration in a public register created by the law for this purpose. Priority is determined either by the date of the agreement or by the date of registration.

A pledge of a negotiable instrument made to the order may

be perfected by endorsing the document to the order of the creditor without any further written agreement being required.

Pledge of receivables and intangible property

Perfection is effected by notice of the existence of the pledge to the debtor. It is arguable whether notice merely perfects the security which has already attached to the property by the agreement of the parties.

Guarantee

A contract of guarantee shall be null and void unless it is in writing.

Fees and taxes apply both for the constitution of the security and its perfection. Notary fees amount to 1.2% and registration fees to 0.8% of the amount stated in the security deed.

Existing liens

3 How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

Registries for hypothecs and pledges (when applicable) are public and accessible for inspection to all who wish to consult them, and provide absolute evidence of the encumbrances over a certain property. Unregistered collateral can only be discovered by due diligence and by requesting the debtor to provide all documents and agreements involving security on moveable things. In that case, the creditor can assure itself by drafting and signing an indemnification agreement containing warranty clauses.

Foreign exchange

4 What are the restrictions, controls, fees and taxes on foreign currency exchange?

There are no foreign currency exchange restrictions, controls or taxes. The official currency exchange rates are fixed by the European Central Bank. Fees for the exchange of currency are not fixed, and therefore every banking organisation may freely decide its transactional charges.

Remittances

5 What are the restrictions, controls, fees and taxes on remittances of investment returns or loan payments to parties in other jurisdictions?

All remittances of funds abroad must be made through commercial banks in Greece. For transfer of capital from Greek residents to non-Greek residents, the banking organisation facilitating a transaction exceeding €12,500 may request particulars and sup-

porting documentation to verify the transaction before making payments. The banking organisation must send all such information to the Bank of Greece. Fees for remittance of funds abroad are not fixed and vary from bank to bank.

Interest, royalties and fees paid to non-resident entities are subject to withholding tax at a rate of 25 per cent for interest and 20 per cent for royalties and fees or at the rate applicable in a tax treaty for the avoidance of double taxation. Greece has enacted legislation incorporating the provisions of the EU Interest and Royalties Directive, which minimises the withholding tax effect in the event of interest and royalty payments made between associate companies.

Dividends are not subject to withholding tax in Greece.

Repatriation

- 6** Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

Greek companies are not obliged to repatriate foreign earnings to Greece although such earnings should be duly recorded in their accounting books and calculated for Greek income tax purposes. Greek companies are not required to convert foreign earnings into euros if such earnings are in foreign currency. There are no restrictions about the manner in which foreign earnings can be used by Greek companies.

Offshore and foreign currency accounts

- 7** May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Greek project companies are allowed to maintain foreign currency accounts in Greece or abroad.

Foreign investment and ownership restrictions

- 8** What restrictions, fees and taxes exist on foreign investment in or ownership of project and related companies? Would such activities require registration with any governmental authority?

In general, there are no restrictions for foreigners having an investment in Greece or owning a project or related company duly established and operating in Greece, whether through a greenfield venture or an acquisition. A foreigner wishing to invest in or own a project or related company in the form of a limited liability company (EPE), will be required to register for tax purposes in Greece before any such investment can be made. If the foreigner is an individual from outside the EU, he/she will be required to obtain a residence permit before he/she is able to invest in a Greek project or related company. There are no such restrictions for foreign shareholders in *sociétés anonymes*.

Prior approval needs to be obtained when project or related companies with foreign investment participation wish to purchase real estate in border areas in Greece. Moreover, when project companies wish to bid for public work or procurement projects, there may be an obligation to declare the identity of the shareholders up to the level of the individual beneficiary.

Project or related companies are not required to make any special registrations, unless, of course, the field in which they are to operate typically requires any such approval, and they do not require any special fees and taxes.

Government approvals

- 9** What government approvals are required for typical project finance

transactions? What fees and taxes apply?

No special government approvals are required of project finance transactions, whether carried out by local or foreign parties. Fees and taxes related to the project company are not different from those incurred by and imposed on any entity carrying out business in Greece, whether involved in project finance or not. There may, of course, be several tax implications that may arise in the course of a project finance transaction (eg, loans may require payment of stamp duty); or there may be a long series of permits (eg, in construction projects) or licences (eg, in the energy sector) that need to be obtained before a project gets off the ground. However, such implications or requirements are not peculiar to project finance transactions.

Stricter formalities are required when a project finance agreement qualifies as a public contract, in which case Greek public procurement law may also be applicable. Moreover, in the case of public-private partnerships (PPPs), as set out in Statute 3389/2005, the PPP contract may impose an obligation upon the private-sector company or consortium to obtain certain approvals; approvals that may be required of the PPP corporate vehicle for the design, financing, operation and maintenance of the project must be issued in the name of such vehicle (article 20 of Statute 3389/2005).

Foreign insurance

- 10** What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Assurance undertakings duly operating and licensed in EU member states may insure risks in Greece under the freedom of services provisions, without establishing a branch in Greece. They must, however, appoint a fiscal representative in Greece before concluding any insurance policies in Greece so as to pay all relevant taxes (ie, premium tax, stamp duty and contribution to the insurance companies' employees fund). On the other hand, foreign non-EU insurance undertakings have to establish a branch in Greece (following an approval by the Ministry of Development) before they can provide insurance services in the country. Liability to pay all indirect taxes related to the insurance services falls upon the Greek branch.

Insurance premiums are subject to premium tax as follows:

- premium tax at a rate of 4 per cent for life insurance policies (if the insurance contract has been agreed for a duration of more than 10 years, it is exempt from premium tax);
- premium tax at a rate of 20 per cent for insurance policies against fire; and
- premium tax at a rate of 10 per cent for all other insurance categories.

Moreover, insurance policies are also subject to stamp duty at the rate of 2.4 per cent, the tax basis being the insurance premium paid plus the premium tax, if any.

The parties to insurance policies can agree that any payments be made to foreign secured creditors. However, any payments should be recorded in the books of the project companies, irrespective of whether the payments are actually made to foreign secured creditors.

Foreign employee restrictions

- 11** What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

Restrictions apply only to citizens of so-called third countries (ie, non-EU member states) and – for a transition period – to citizens of Bulgaria and Romania. According to article 15 of Statute 3386/2005 on the arrival and domicile of foreigners, non-EU citizens who wish to be employed in Greece must first enter into an employment agreement with a Greek employer, and then obtain both an employment visa and a residence permit. Article 17 of the same statute provides that board members, administrators, executives and clerical staff who are not citizens of an EU member state are granted a residence permit if their employer has set up a subsidiary or a branch in Greece. This permit is granted initially for a period of up to one year and may be renewed for subsequent two-year periods.

Equipment import restrictions

12 What restrictions exist on the importation of project equipment?

There are no particular restrictions on the importation of project equipment. Some paperwork formalities may arise (eg, with customs authorities) when importing such equipment from third countries, ie, outside the EU.

Nationalisation and expropriation

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

Article 106, paragraph 3 of the Greek Constitution stipulates that

... a law may regulate matters concerning the takeover of enterprises or the compulsory participation therein by the state or other public bodies, if the said enterprises are of monopolistic nature or of vital importance to the development of national resources or have as their main purpose the rendering of services to society as a whole.

Such nationalisation or expropriation is rather a matter of the past and reserved for undertakings that, first, are either monopolistic or of a general interest to the entire society or vital for the development of the country's national resources; and secondly, they have run into such circumstances that the only way to rescue them and protect public interest is for the state to walk in. Nonetheless, in the period between 1975 and 1990, this constitutional option was sometimes abused, as reflected in rulings of the European Court of Justice (eg, ECJ C-19/90, ECJ C-381/89, ECJ C-441/93). Be that as it may, Legislative Decree 2687/1953, which remains in force under article 107 of the Greek Constitution, provides that assets of undertakings which have been incorporated or substantially financed through foreign capital are excluded from any expropriation.

Fiscal treatment of foreign investment

14 What tax 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?

In the past, Greece enacted various laws to promote foreign investment. The most significant piece of such legislation is Legislative Decree 2687/1953, which provides certain incentives and protection of foreign capital to foster long-term investment projects, especially in the infrastructure sector. Although Legislative Decree 2687/1953 has, from a practical point of view,

become inactive in many respects, it has introduced general principles on the treatment of foreign investment which are still in force. Protection is provided in the following forms:

- Terms and conditions governing importation of foreign capital cannot be modified without the investor's consent.
- International arbitration applies for the settlement of disputes between the investor and the Greek government.
- Protection of a project's assets from expropriation.
- Exemptions from taxes, contributions and duties imposed by local authorities and municipalities.

In addition to Legislative Decree 2687/1953, Greece has in recent years enacted various investment laws. The one currently in force is Statute 3299/2004 which introduces substantial and procedural changes to the regime of state aid to corporations and provides for the following types of incentives: cash grants, leasing subsidies, tax relief and a cash grant for payroll expenses relating to employment created by an investment. The law was partially amended at the end of 2006 to be harmonised with the new regional aid map that will apply to the EU for the period 2007-2013. The incentives depend on the zone and category of investment.

The law provides medium-size enterprises with additional aid of up to 10 per cent and small and very small enterprises with additional aid of up to 20 per cent.

In addition to Statute 3299/2005, a new law introducing PPPs was enacted in September 2005 (Statute 3389/2005). The law sets out the framework for the active development of state-owned real estate and the more efficient provision of public goods and services through partnerships with the private sector.

Relevant government authorities

15 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

In the field of telecommunications and postal services, the National Committee for Telecommunications and Postal Services shares authority with the Ministry of Transportation and Telecommunications. Both industries have been liberalised, discontinuing long-standing state monopolies and opening up competition to several new providers in all sub-sectors of these industries (eg, mobile telephony, fixed telephony, courier services, etc).

In the energy field, the Regulatory Authority of Energy (RAE) shares regulatory responsibility with the Ministry of Development. By and large, the Ministry has the last word on most licensing matters whilst RAE retains a predominantly advisory role. Production and supply of electricity have now been fully liberalised, in accordance with the EU electricity directives, but true competition is yet to enter the Greek market. Unlike generation and supply, transmission and distribution of electricity have been designated as natural monopolies. As far as the natural gas market is concerned, it has been recently developed in three urban centres (Athens, Thessaloniki and Thessaly). The market of petroleum products has been fully liberalized.

In the mining sector, several bodies are at play: (i) the Institute of Geological and Mineral Exploration; (ii) the General Directorate of Natural Resources at the Ministry of Development; (iii) the two Mines Inspectorates (for northern and southern Greece); and (iv) local Prefectures which grant most of the concession and leasing rights for the exploitation of minerals. Before the issue of an authorisation for the exploration or exploitation of

mines, authorities such as the Archeological Authority, the Hellenic Organisation of Tourism, and the military authorities give opinions on matters falling within their field of responsibility.

Chemical refining is supervised by the so-called General Chemical Laboratory of the State (a department of the Ministry of Economy).

In so far as ports are concerned, the Ministry of Merchant Marine is responsible for the organization, management, maintenance and development of ports and port facilities, which are still all under state control. This is expected to change in the near future primarily through PPP arrangements.

In the water sector, the competent authorities are the Ministry of Development and the regional departments for the Administration of Water Resources. Other ministries, however, may get involved depending on the use of the water (eg, the Ministry of Agriculture for agricultural purposes; the Ministry of Transportation for transportation purpose, and so on). The sector is still largely controlled by the state and municipal authorities.

International arbitration

16 How are international arbitration contractual provisions and awards recognised by local courts? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

International commercial arbitration is governed by Statute 2735/1999, which transposed the UNCITRAL rules into national law. Its scope covers any commercial dispute or a dispute of an economic nature. The provisions of Statute 2735/1999 are applicable when the place of the arbitration is in Greece. Investment disputes are governed by Statute 608/1968, which ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention).

Disputes that are automatically referred to arbitration are those referring to the protection of foreign investments pursuant to Legislative Decree 2687/1953.

Labour disputes are explicitly excluded from arbitration and so are family law matters.

Article 903 of the Code of Civil Procedure governs the recognition whereas article 906 covers the enforcement of foreign arbitral awards. Recognition of foreign arbitral awards can be recognised in Greece if the following conditions are met:

- the arbitration agreement on the basis of which the arbitral award was granted is valid under its governing law;
- the subject matter of the award is arbitrable under Greek law;
- the award cannot be challenged by any review or other legal remedies;
- the party on which the arbitral award was imposed has not been deprived of its right to defence during the arbitral proceedings;
- the foreign award is not contrary to a domestic judgment binding the same parties to the same cause of action; and
- the award is not contrary to the Greek public order.

A foreign arbitral award may be executed in Greece upon being declared enforceable; the prerequisites for enforcement are the same as those required for recognition.

Applicable law

17 What law typically governs project agreements? What law typically governs financing agreements? Which matters are governed by domestic law?

PPPs and public contracts are typically governed by Greek law.

Project agreements not involving the public sector may be governed by the law the parties choose to the extent that this is permissible. This may not be the case, for instance, with certain employment matters and security rights. Greece is a party to the 1980 Rome Convention on the law applicable to contractual obligations.

Financing agreements are usually governed by Greek law, yet foreign law (most notably English law) may sometimes be chosen depending on whether the financing institutions are domiciled in Greece or not.

Jurisdiction and waiver of immunity

18 Is the submission to a foreign jurisdiction and the waiver of immunity of all kinds effective and enforceable?

Agreements conferring jurisdiction on a foreign court are valid and recognized under Greek law both under the Code of Civil Procedure and under Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Although differences exist between these two sets of laws, the basic rule is that the parties may by agreement confer jurisdiction upon a foreign court to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, provided (i) the agreement is in writing or evidenced in writing and (ii) the subject-matter is of a pecuniary nature. There are special provisions for insurance, consumer contracts, employment contracts and for matters of exclusive jurisdiction. The agreement must also identify the foreign court.

The agreement will not be valid if the recourse to the foreign jurisdiction is impossible and results in denial of justice, eg, where the foreign courts refuse to hear the case because under their procedural rules they do not have jurisdiction or where the decision will not be recognised in Greece.

Submission to a foreign jurisdiction may also be tacit if the defendant makes an appearance without challenging the jurisdiction of the foreign court.

Waiver of immunity is effective provided it is express. Immunity is mainly enjoyed by states for acts of government, that is acts exercised as part of the sovereignty of a state (*iure imperii*) and not for acts of commercial nature (*iure gestionis*). However, in the latter case the state may also enjoy immunity if judicial proceedings would harm its sovereignty rights or reduce its independence and dignity. Waiver of immunity as a jurisdictional bar may not include execution proceedings for which special waiver may be required.

Bankruptcy

19 What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes are available to seize the assets of a business outside of court proceedings?

Only commercial entities may be declared bankrupt and be subject to bankruptcy proceedings. Accordingly, entities with no commercial object pursuant to their articles or constitution cannot be declared bankrupt. To those entities the rules of winding up and liquidation apply.

Out-of-court enforcement proceedings may be available provided the creditor's claim is incorporated in an executory title, eg, in a notarial deed, and the claim is for a certain amount of money. Although enforcement (that is, the attachment of assets) will take place without the court's intervention, the debtor may object to it and thus force the case to court. Notarial deeds may

Update and trends

Following enactment of Statute 3389/2005 on public-private partnerships, PPP projects are expected to dominate the Greek economy in the next few years, together with the many energy projects for the construction of gas-fired power plants, wind farms and photovoltaic sites that are now in the pipeline.

operate as executory titles only with regard to pecuniary claims or to obligations regarding the delivery of property.

There is no difference between a domestic and a foreign claim, provided the foreign creditor can prove its claim and has title to enforce it. This will normally be in the form of a foreign judgment or arbitral award that can be recognised and enforced in Greece.

Title to natural resources

20 Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

Minerals found in the ground are not the property of the land owner, which may grant rights of exploration and production of minerals by a concession agreement according to the provisions of the Mining Code.

Ownership of hydrocarbons is vested in the Greek state which has the right of research, exploration and production for all hydrocarbons reservoirs within the Greek territory, whether onshore or offshore. The state has also the right to expropriate private land for the needs of exploration and production of oil or natural gas. It is provided that both surface and subsurface mineral rights on private properties may be expropriated for such purposes.

In accordance with the Greek Civil Code, streaming water (eg, rivers), water in the ground, fountains and lakes are for common use, and belong to the state. However, small artificial lakes situated in private properties belong to the land owner, and water supply reservoirs belong to the municipality or prefecture where they are situated.

Exploration and exploitation activities related to natural resources may be performed by a legal or natural person residing in any member state of the EU. Exploitation rights may be

granted to a non-EU natural or legal person only following an approval of the Ministerial Council.

Royalties on the extraction of natural resources

21 What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

In the hydrocarbons sector, Statute 2289/1995 (Prospecting, Exploration and Exploitation of Hydrocarbons) provides that royalties are payable to the state for hydrocarbons (mainly oil) exploration and production. The state may opt between two types of concession contracts: a leasing contract or a contract for production sharing. Statute 2289/1995 provides that the concessionaire is subject to a special income tax of 40 per cent. The imposed tax is calculated on the net income of the concessionaire as accrued from the activities of prospecting, exploring and exploiting hydrocarbons. Statute 2289/1995 (eg, articles 8 and 9) and Presidential Decree 127/1996 set out a complex system of revenue classification and expense allowances as well as various exemptions from customs duties.

The Mining Code sets out the maximum royalty at 6 per cent of the selling price of the crude minerals or 2 per cent of the selling price of the processed mineral. The royalty can be paid in cash or in minerals, as decided by the State. The concessionaire is subject to a tax of 5 per cent, and this is calculated by the competent Minister or Prefect.

Export of natural resources

22 What restrictions, fees or taxes exist on the export of natural resources?

In line with EU legislation, imports and exports of all products are undertaken freely, yet certain duties and customs may be imposed depending on the kind of exported product.

Environmental, health and safety laws

23 What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

The following table sets out the key laws and regulatory bodies dealing with environmental, health and safety laws in typical project sectors:

Sector	Law or regulation	Regulatory body
Telecommunications	Statute 2867/2000	Ministry of Transport and Telecommunications
Ports	Presidential Decree 242/1999	Ministry of Merchant Marine

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Mining	Mining Code	Ministry of Development
Water	Statute 1739/1987	Ministry of Environment
Electricity	Statute 2773/1999	Ministries of Development and of Health
Hydrocarbons	Statute 2289/1995	Ministry of Development
Oil Refining	Ministerial Decision 344/1990	Fire Department
Transportation	Presidential Decree 293/1999	Ministry of Transport and Telecommunications
Chemicals	Statutes 4328/1929, 2343/1995, 3427/2005 and Presidential Decrees 543/1989 and 91/1999	General Chemical Laboratory of the State

Project companies

24 What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

Project companies usually take the form of a corporation, i.e. either a company limited by shares (*société anonyme*) or, less frequently, a company with limited liability (EPE). A project entity may, however, avoid legal personality altogether through the vehicle of the so-called *koimopraksia*, a joint venture that is registered only for tax purposes and relates to a specific project.

Statute 3389/2005 on PPPs provides for the establishment of special purpose companies that will operate as *sociétés anonymes* for the purposes of a PPP.

There are no financing sources peculiar to project companies. Sources of financing are the same as in any other venture (eg, bank loans, issue of bond loans, raising equity).