

Greece

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1 Collateral

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 (securities, shares, etc);
- pledge on intangible property (receivables, rights, intellectual property rights, patents, trademarks, etc);
- pledge on bank accounts;
- floating lien retained in collateral even when the collateral changes in character, classification, or location, including security interest or general claim on all of a company's inventory;
- guarantee: pursuant to a contract of guarantee, the guarantor promises to pay a creditor if the debtor defaults; and
- securitisation of assets, receivables and financial instruments.

2 Perfection and priority

How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

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. The registration of a hypothec requires a notary deed, a court decision or any other title provided by law and two summaries of the title.

Hypothec prenotation on immoveable property

Perfection is effected in the same manner as a hypothec, with the specific difference 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 that 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 per cent, Lawyers' Fund fees amount to 1.3 per cent and registration fees to 0.775 per cent (or 0.875 in the event of real estate registered in municipalities where a Cadastre has been established) of the amount stated in the security deed. The registration of hypothecs and the establishment of pledges and liens as well as the execution of agreements and deeds effected for the security of investments made in Greece pursuant to the special regime under Law 2687/1953 are exempt from duties and third-party fees. The granting of any security with respect to corporate bonds provided in Law 3156/2003 are exempt from any direct and indirect taxes, duties, stamp duties, fees and any other charges in favour of the Greek state. Moreover, the registration, transfer or deregistration of any real rights in any public book, registrar or land registry and the registration of agreements regarding the securitisation of assets are subject to low fixed duties. In the event notary deeds are executed with respect to corporate bonds provided in Law 3156/2003 and securitisation of assets, the law provides for low fixed notary fees and fees for the Lawyers' Fund. There are similar exemptions and reductions in the event of securitisation made by the Greek state.

The existence of a legal claim, based on a contractual obligation, a court decision or a law provision, is a necessary prerequisite for holding collateral. For this reason, a third party (ie, a corporate entity) cannot hold collateral in the absence of a legal reason or a claim that would allow it to proceed with acts of enforcement against such property. A third party may only hold collateral in place of the project lenders if there is an agreement according to which the two parties agree that the project lenders will assign to the third party their right to collateral. This agreement is usually in writing, in the form of a private deed, even though the parties may decide to conclude the said agreement in the form of a notary contract.

3 Existing liens

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 by 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 asking 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.

4 Enforcement of collateral

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

Foreclosure

To initiate a foreclosure procedure an enforcement title is required, which may take the form of any of the following: an unappealable court decision, a Greek court decision with provisional enforcement, an arbitration award, the minutes of any Greek court, a notary deed, a court payment order or any other title recognised by the law as enforceable. The said procedure is held by the bailiff, who must, at first, notify the debtor of the enforcement title accompanied by a payment order. If the debtor does not settle its debt within three days following the notification of the enforcement title accompanied by the payment order, then the bailiff, in execution of the lender's order, can proceed with the foreclosure of the debtor's moveable or immovable property. In the first case (foreclosure of moveable property), the bailiff has only to remove from the debtor the object and draft the foreclosure report. In the second case (foreclosure of immovable property), the bailiff must take the following steps:

- determine, in collaboration with the notary, the date of the collateral's sale;
- prepare the foreclosure report, including all necessary details (description of the land, eventual hypothecs, the debtor's name, the place and date of the sale, the sale's terms, etc);
- register the foreclosure with the Cadastre/Land Registry;
- serve to the debtor the foreclosure report, notifying it of the sale of the property; and
- submit to the notary a copy of the foreclosure report.

Following the completion of the above steps, the debtor has two possibilities: either pay the entire amount of the debt thereby avoiding the foreclosure and sale procedure or appeal against the foreclosure procedure within five days from the predetermined date of the sale.

Sale

The debtor's foreclosed immovable property may be sold in public before the notary who is responsible for the conduct of the sale. Sales are held always on Wednesdays from 12:00 to 14:00 in the municipality where the foreclosed land is situated. The steps that must be taken for the sale of the debtor's immovable property are the following:

- the bailiff prepares a summary of the foreclosure report, including all necessary details (description of the land, eventual hypothecs, debtor's name, place and date of sale, sale terms, etc);
- the bailiff serves to both the debtor and the notary the summary of the foreclosure report; and
- 15 days before the scheduled date of sale, an extract of the foreclosure report must be published in a daily newspaper, circulated at the place of the sale.

At this stage, the debtor has the possibility either to pay the entire amount due and cancel the sale procedure or appeal against the sale

procedure at least five days before the predetermined date of the sale. In this case, the sale may be suspended for a maximum of six months. In any other case, the sale takes place as determined and it is completed with the acceptance of the highest bid. Anybody can participate in the bidding procedure, including the project lenders and any other lender. The sale amount must be fully paid within 15 days from the date of sale, after which the notary must deliver to the bidder a summary of the foreclosure report, which has to be registered with the Cadastre or Land Registry. At this point, the sale procedure is completed and the bidder becomes the new proprietor of the sold land. The intervention of the court is not required for the completion of the above procedure.

5 Bankruptcy proceeding

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 collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

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, for example 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 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.

6 Foreign exchange

What are the restrictions, controls, fees, taxes or other charges 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.

7 Remittances

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 supporting 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 25 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.

8 Repatriation

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.

9 Offshore and foreign currency accounts

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.

10 Foreign investment and ownership restrictions

What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

In general, there are no restrictions for foreigners with 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 European Union, he or she will be required to obtain a residence permit before he or she is able to invest in a Greek project or related company in the form of an EPE. 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. There are no particular restrictions applicable to foreign investors or creditors in the event of foreclosure on the project and related companies. Greece has signed a plethora of bilateral investment treaties with certain key countries, including China, Russia, Korea, Germany, South Africa, Turkey, Hungary and Poland.

11 Documentation formalities

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?

There are no particular formalities regarding financing or project documentation. However, if a project company wishes to participate in public-private partnership (PPP) transactions, then it may be asked

to submit to the Ministry of Finance several documents regarding the company's financial status, its technical and professional activities, as well as the identity of its shareholders or directors. These documents must be submitted in the Greek language; therefore a Greek translation from the Ministry of Foreign Affairs or a lawyer is usually required if the participant is a foreigner.

12 Government approvals

What government approvals are required for typical project finance transactions? What fees and other charges apply?

No special government approvals are required for 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 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).

13 Foreign insurance

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 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.

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.

14 Foreign employee restrictions

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

Restrictions apply only to citizens of third countries (ie, non-EU member states). 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 as well as staff working for foreign companies operating in Greece under special investment regimes who are not citizens of an EU member state are granted a residence permit if their employer has set up a subsidiary, a branch or an office in Greece. This permit is granted initially for a period of up to one year and may be renewed for subsequent two-year periods.

15 Equipment import restrictions

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, namely those outside the European Union.

16 Nationalisation and expropriation

What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of 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, have run into such circumstances that the only way to rescue them and protect public interest is for the state to intervene. 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 that have been incorporated or substantially financed through foreign capital are excluded from any expropriation.

17 Fiscal treatment of foreign investment

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?

In the past, Greece enacted various laws to promote foreign investment. The most significant 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; and
- exemptions from taxes, contributions and duties imposed by local authorities and municipalities.

In addition, Greece has in recent years enacted various investment laws. At the time of publication there is no current law or draft law in parliament. However, one is expected to be enacted in the autumn of 2010 replacing the previous Statute 3299/2004, which had introduced 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 incentives depended on the zone and category of investment.

In addition to Statute 3299/2004, 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.

18 Government authorities

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).

In the energy field, including oil and gas, 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 while 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 liberalised.

In the mining sector, several bodies are at play: the Institute of Geological and Mineral Exploration; the General Directorate of Natural Resources at the Ministry of Development; the two Mines Inspectorates (for northern and southern Greece); and 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 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 organisation, 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 transport purpose, and so on). The sector is still largely controlled by state and municipal authorities.

19 International arbitration

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? 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. 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 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.

Greece has been a member of the ICSID Convention since 21 May 1969. Greece is also a member of a host of international conventions regarding the recognition and enforcement of arbitral awards such as the New York Convention, the World Intellectual Property Organisation, etc.

20 Applicable law

Which jurisdiction's law typically governs project agreements? Which jurisdiction's 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 or not the financing institutions are domiciled in Greece.

21 Jurisdiction and waiver of immunity

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Agreements conferring jurisdiction on a foreign court are valid and recognised 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 that (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, for example 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.

22 Title to natural resources

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 landowner but of the state, 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 also has 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, springs and lakes are for common use, and belong to the state. However, small artificial lakes situated in private properties belong to the landowner, 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 European Union. Exploitation rights may be granted to a non-EU natural or legal person only following approval of the Ministerial Council.

23 Royalties on the extraction of natural resources

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.

24 Export of natural resources

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.

25 Environmental, health and safety laws

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	Statutes 3431/2006 and 2867/2000, as duly amended	Ministry of Transport and Telecommunications
Ports	Presidential Decree 242/1999, as amended by PD 6/2007 and PD 48/2007	Ministry of Merchant Marine
Mining	Mining Code (Law Decree 210/1973)	Ministry of Development
Water	Statute 1739/1987	Ministry of Environment and Regional Authority
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

26 Project companies

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, 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 *koino-praksia*, 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).

27 Public-private partnership legislation

Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

PPP transactions are governed by Statute 3389/2005, which applies in all kind of transactions between public and private partners (culture, defence, education, environment, health, municipalities, ports, accommodation, transport, etc). The said statute specifies that PPP transactions refer to partnership agreements between public and private entities for the execution of works or the supply of services that normally belong to the competence of the Greek state. The Greek state, the local administrative authorities and all legal persons of the public sector are considered public entities. The realisation of PPP transactions is under the control of the Ministry of Finance, which is responsible for the organisation of public tenders and the selection of the most appropriate private partners for the execution of PPP transactions.

28 PPP – limitations

What, if any, are the practical and legal limitations on PPP transactions?

According to Statute 3389/2005, the object of PPP transactions must be the execution of works or the supply of services that belong to the competence of the Greek state. Activities relating to national defence, the police, the justice system or the execution of penalties are excluded from PPP transactions, as they belong to the competence of the Greek state, pursuant to the Greek Constitution. In PPP transactions there are several principles that must be applied such as the equal treatment of all candidates, the transparency of the process, the protection of the public interest, freedom of competition and the protection of the environment.

The qualifications of the candidates may be specified by the competent authority (the Ministry of Finance) in the invitation to tender. However, Statute 3389/2005 sets out general rules and limitations, such as the exclusion of candidates having been sentenced to prison for at least three months. Further limitations can be provided for candidates in bankruptcy, liquidation or compulsory administration, as well as for candidates having demonstrated severe faulty behaviour relating to the execution of their job. The same limitations are also valid for candidates who avoid settling their contributions to social security organisations or their taxes, pursuant to Greek tax legislation.

Apart from the above general criteria, the competent authority also has to examine the candidates' credit capacity and, especially, their financial status, their financing sources and their range of activities. It also has to verify their technical and professional capacities through a detailed list, containing their services and activities, their technical equipment, as well as their personnel and its qualifications.

As proof of all the above, the competent authority may demand relevant documentation from the candidates.

29 PPP – transactions

What have been the most significant PPP transactions completed to date in your jurisdiction?

To date, projects, such as the Attiki Odos motorway, the Athens International Airport and the Rion–Antirion bridge, have been implemented in Greece via concession agreements. The main feature of these projects is that the end-user pays fees (eg, tolls) and in this way the concessionaire is repaid for the construction of the project

Update and trends

At a critical time for the Greek economy, a new investment law (amending the previous investment law 3299/2004, which was in force until 29 January 2010) has recently been issued for public consultation; the new law aims to reinforce the competitiveness of Greek companies and attract new investment through various incentives. In order to achieve this goal, the ambit of the new investment law focuses on incentivising a new investment model based on competitiveness, quality, innovation, productivity and green enterprising, while at the same time providing for a balanced development throughout Greece through the granting of incentives on both local and regional level. In particular, the new investment law provides for new forms of investment support, within which the most significant seems to be a dramatically improved tax benefit. Up to now, investors were able to select one of three forms of investment support: cash grants/leasing subsidies, wage subsidies for new employment created by the investment of up to 60 per cent of the overall investment cost or non-taxable income of up to 100 per cent of the investment at a 25 per cent tax rate. This translated to a tax benefit of up to 25 per cent of the investment. Now, the tax benefit has been increased to match the level of the cash grants/leasing subsidies and constitutes a substantial benefit for investors. In this context, the new investment law, introduced by the Ministry of Economy, Competitiveness and Shipping, is intended to be a major driver of a new development model that will incorporate green development as a priority.

In addition, Law 3853/2010, which entered into force on

17 June 2010, provides for the extensive simplification of the process regarding the incorporation of all forms of companies, including most importantly the form of companies selected by foreign investors, ie, Greek *sociétés anonymes* and limited liability companies. To date, the incorporation of a *société anonyme* or a limited liability company comprised various procedural steps before several authorities (ie, the prefecture, the chamber of commerce, the National Printing Office, etc). Under the new law, there is only one competent authority to which any interested person may apply for the incorporation of his company. This authority is known as the 'One-Stop Service' and is charged with the overall control of a new company's incorporation process. As a consequence, the time required for the incorporation of a company is significantly reduced to one or two days (instead of two weeks as required up to now), which also constitutes a significant incentive for new investors.

Lastly, Law 3863/2010, which entered into force in July 2010, introduced important changes to the provisions of Greek employment law regarding mass dismissals and statutory dismissal indemnity. According to the new provisions, companies with 20–200 employees have the right to dismiss up to six employees (previously four employees) a month and companies with more than 200 employees have the right to dismiss up to 5 per cent of their employees (previously 2–3 per cent) a month, but not more than 30. Moreover, the new law provides for more flexible conditions for dismissing employees, with shorter notification periods. This allows enterprises to have easier exit strategies with respect to the cost of their exit.

and the services offered. However, in the case of infrastructure or public services where the end-users cannot be directly charged, their cost must be covered by the state. PPPs were introduced into Greek legislation pursuant to Statute 3389/2005. The first PPP tender was conducted in 2007. As of September 2008, 52 projects with a value of €5.7 billion have been approved and more than 100 international companies have participated in PPP tenders. We provide below an indicative example of some of the PPP projects that were tendered:

- the design, construction, financing and facility management of seven new buildings of the Hellenic Fire Service (€31.5 million);
- the design, construction, financing, facility management and maintenance of three prisons (€198 million);
- the design, construction, financing and facility management of

the building infrastructure of 13 police divisions, departments, stations and other regional services of the Hellenic Police Force (€89 million);

- the design, financing, construction, and facility management of 16 school buildings in the Central Macedonia Region, with a total area of approximately 41,000m² (€80 million); and
- the design, financing, construction, facility management and provision of relevant services, of the Paediatric Hospital in Thessaloniki and the design, financing, construction and maintenance of four buildings: three of them are to be used by the Municipality of Mikra for cultural and commercial activities, while the fourth one, with an area of 700m², is to accommodate a nursery school for the Municipality of Mikra (€389 million).


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